IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN OVERSIGHT, *Plaintiff*, v. U.S. DEPARTMENT OF JUSTICE, *Defendant*.	)	Case No. 18-cv-319 (CRC)

PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Plaintiff American Oversight respectfully moves for summary judgment as to Defendant's: (1) failure to conduct an adequate search under the Freedom of Information Act ("FOIA") for records responsive to Plaintiff's request, 5 U.S.C. § 552(a)(3); and (2) improper withholding of responsive records, 5 U.S.C. § 552(a)(3). There are no genuine issues of material fact with respect to these issues. The accompanying Memorandum sets forth more fully the reasons that support American Oversight's motion.

Dated: December 13, 2018

Respectfully submitted,

/s/ Cerissa Cafasso
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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2018, a true and correct copy of the foregoing was served on Defendant via its counsel of record through the Court's Electronic Case Filing (ECF) system.

/s/ *Cerissa Cafasso*
Cerissa Cafasso

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

In November 2017, Defendant U.S. Department of Justice represented to the U.S. House of Representatives Committee on the Judiciary that, in lieu of appointing a second special counsel as requested by the Committee, the Department had "directed senior federal prosecutors to evaluate certain issues" raised in letters from the Committee relating to presidential candidate Hillary Clinton, the Clinton Foundation, and the conduct of the Federal Bureau of Investigation during the 2016 presidential campaign. Plaintiff American Oversight promptly filed requests under the Freedom of Information Act seeking records that would identify those "senior federal prosecutors" and the mandate they were given. In response, the Department identified one prosecutor directed to evaluate these matters—the U.S. Attorney for the District of Utah. But notwithstanding the irregularity of lodging such matters with the U.S. Attorney for the District of Utah given its limited geographic remit, the Department claims that it found no records providing written directives or guidance, formal or informal, to him regarding the scope of the review he has been directed to undertake. The Department further claimed that this was so despite the fact that the absence of written directives or guidance in these circumstances would be contrary to the Department's past practice. The purported absence of records where one would ordinarily expect to find them indicates either the Department's search was inadequate or we—Plaintiff, Congress, and the American public—are to trust that an irregular and politically charged assignment occurred one-on-one, orally, with no contemporaneous record.

BACKGROUND

Chairman Goodlatte's 2017 Call for an Investigation of Hillary Clinton

On July 27, 2017, Bob Goodlatte, Chairman of the House of Representatives Committee on the Judiciary ("the Committee"), and nineteen other members of the Committee signed a

letter to then-Attorney General Jeff Sessions and Deputy Attorney General Rod Rosenstein requesting the appointment of a second special counsel to investigate numerous actions taken by persons who served in the executive branch during the Obama administration, including former Secretary of State Hillary Clinton. *See* Letter from Bob Goodlatte, Chairman, U.S. House of Representatives, Comm. on the Judiciary, et al., to Jeff Sessions, Attorney General, U.S. Dep't of Justice & Rod Rosenstein, Deputy Attorney General, U.S. Dep't of Justice (July 27, 2017) (found in Exhibit A to the Declaration of Vanessa Brinkmann, ECF No. 16-3, at 12–18) ("July Letter"). Specifically, the July Letter enumerated fourteen "questions" that the Committee believed a new special counsel should be appointed to investigate:

> 1) Then-Attorney General Loretta Lynch directing [then-FBI Director James] Comey to mislead the American people on the nature of the Clinton investigation;
> 2) The shadow cast over our system of justice concerning Secretary Clinton and her involvement in mishandling classified information;
> 3) FBI and DOJ's investigative decisions related to former Secretary Clinton's email investigation, including the propriety and consequence of immunity deals given to potential Clinton co-conspirators Cheryl Mills, Heather Samuelson, John Bentel and possibly others;
> 4) The apparent failure of DOJ to empanel a grand jury to investigate allegations of mishandling of classified information by Hillary Clinton and her associates;
> 5) The Department of State and its employees' involvement in determining which communications of Secretary Clinton's and her associates to turn over for public scrutiny;
> 6) WikiLeaks disclosures concerning the Clinton Foundation and its potentially unlawful international dealings;
> 7) Connections between the Clinton campaign, or the Clinton Foundation, and foreign entities, including those from Russia and Ukraine;
> 8) Mr. Comey's knowledge of the purchase of Uranium One by the company Rosatom, whether the approval of the sale was connected to any donations made to the Clinton Foundation, and what role Secretary Clinton played in the approval of that sale that had national security ramifications;
> 9) Disclosures arising from unlawful access to the Democratic National Committee's (DNC) computer systems, including

inappropriate collusion between the DNC and the Clinton campaign to undermine Senator Bernie Sanders' presidential campaign;

10) Post-election accusations by the President that he was wiretapped by the previous Administration, and whether Mr. Comey and Ms. Lynch had any knowledge of efforts made by any federal agency to unlawfully monitor communications of then-candidate Trump or his associates;
11) Selected leaks of classified information related to the unmasking of U.S. person identities incidentally collected upon by the intelligence community, including an assessment of whether anyone in the Obama Administration, including Mr. Comey, Ms. Lynch, Ms. Susan Rice, Ms. Samantha Power, or others, had any knowledge about the "unmasking" of individuals on then candidate-Trump's campaign team, transition team, or both;
12) Admitted leaks by Mr. Comey to Columbia University law professor, Daniel Richman, regarding conversations between Mr. Comey and President Trump, how the leaked information was purposefully released to lead to the appointment of a special counsel, and whether any classified information was included in the now infamous "Comey memos";
13) Mr. Comey's and the FBI's apparent reliance on "Fusion GPS" in its investigation of the Trump campaign, including the company's creation of a "dossier" of information about Mr. Trump, that dossier's commission and dissemination in the months before and after the 2016 election, whether the FBI paid anyone connected to the dossier, and the intelligence sources of Fusion GPS or any person or company working for Fusion GPS and its affiliates; and
14) Any and all potential leaks originated by Mr. Comey and provide[d] to author Michael Schmidt dating back to 1993.

Id. at 15–16.

On September 26, 2017, Chairman Goodlatte and thirteen of the other signatories from the July Letter renewed their call for a second special counsel. *See* Letter from Bob Goodlatte, Chairman, U.S. House of Representatives, Comm. on the Judiciary, *et al.*, to Jeff Sessions, Attorney General, U.S. Dep't of Justice & Rod Rosenstein, Deputy Attorney General, U.S. Dep't of Justice (Sept. 26, 2017) (found in Brinkmann Decl. Ex. A at 19–22) ("September Letter"). The September Letter focused primarily on certain actions taken by the FBI toward the end of the investigation led by then-FBI Director James Comey—with the impetus for the letter stemming

from the revelation that Director Comey had drafted a statement regarding the termination of the investigation of Secretary Clinton before several witnesses had been interviewed, including Secretary Clinton herself. *Id.* at 19. Believing that certain senior government officials "pre-judged" the investigation, the Committee again "implore[d]" Attorney General Sessions and Deputy Attorney General Rosenstein "to name a second special counsel, to investigate this and other matters related to the 2016 election, including the conduct of the Justice Department regarding the investigation into Secretary Clinton's private email server." *Id.* at 21. At no point does the September Letter reference either the sale of Uranium One or the Clinton Foundation—both of which had been listed previously in the July letter. *See id.* at 19-22; July Letter at 16.

The Department's Responses to Chairman Goodlatte and the Subsequent Investigation

With Attorney General Sessions slated to testify before the Committee the next day, *see* Cafasso Decl. Exs. 1 & 2, on November 13, 2017, the Assistant Attorney General for Legislative Affairs, Stephen E. Boyd, responded to the Committee's July and September Letters. *See* Letter from Stephen E. Boyd, Assistant Attorney General, Office of Legislative Affairs, U.S. Dep't of Justice, to Bob Goodlatte, Chairman, U.S. House of Representatives, Comm. on the Judiciary (Nov. 13, 2017) (found in Brinkmann Decl. Ex. A at 23–24) ("Boyd Response"). Assistant Attorney General Boyd opened the letter by summarizing the Chairman's letters as "request[ing] the appointment of a Special Counsel to investigate various matters, including the sale of Uranium One, alleged unlawful dealings related to the Clinton Foundation and other matters." *Id.* at 23. The letter goes on to state that "the Attorney General has directed senior federal prosecutors to evaluate certain issues raised in your letters." *Id.* at 23.[1]

[1] Despite the use of a past tense ("has directed") and the plural ("senior federal prosecutor*s*") in this representation to Congress, the Department's response to American Oversight's FOIA request identified only one such prosecutor—U.S. Attorney John Huber—who had been directed

On March 6, 2018, Chairman Goodlatte again called on Attorney General Sessions and Deputy Attorney General Rosenstein to appoint a special counsel, this time joined only by Trey Gowdy in his role as Chairman of the House Oversight and Government Reform Committee. *See* Decl. of Cerissa Cafasso in Supp. of Pl.'s Cross-Mot. for Summ. J. & in Opp. to Def.'s Mot. for Summ. J. ("Cafasso Decl.") Ex. 3 ("March Letter"). A special counsel is necessary, the chairmen said, to investigate "certain decisions made and not made by the Department of Justice and FBI in 2016 and 2017"—with the special appointment mandated by both "the public interest" and "potential and actual conflicts of interest" of current Department and FBI officials. *Id.* at 1. The letter at no time explicitly names or otherwise identifies the purportedly conflicted Department or FBI official(s), but alleges that there is evidence of "bias, trending toward animus," of the inappropriate use of "political opposition research" in court filings, and of questionable use of the Foreign Intelligence Surveillance Act (FISA) warrant process. *Id.* at 1. The March Letter concludes that a special counsel must be appointed to review:

> [D]ecisions made and not made by the Department of Justice and the FBI in 2016 and 2017, including but not limited to evidence of bias by any employee or agent of the DOJ, FBI, or other agencies involved in the investigation; the decisions to charge or not charge and whether those decisions were made consistent with the applicable facts, the applicable law, and traditional investigative and prosecutorial policies and procedures; and whether the FISA process employed in the fall of 2016 was appropriate and devoid of extraneous influence.

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to undertake a review. The irony is not lost on American Oversight that this apparent misrepresentation is immediately preceded in the Boyd Response by a statement that "the Department's leadership has a duty to carefully evaluate the status of ongoing matters to ensure . . . that the Department's communications with Congress are accurate and complete" Boyd Response at 23. Nevertheless, in light of the Department's sworn declaration that the representation to Congress that multiple senior prosecutors had been assigned was false, Brinkmann Decl. ¶ 14, American Oversight is no longer litigating the adequacy of the search for records to reconcile the obvious discrepancy.

Id. at 2.

On March 15, 2018, Chairman Chuck Grassley and three other members of the U.S. Senate Committee on the Judiciary wrote a letter to Attorney General Sessions and Deputy Attorney General Rosenstein also requesting the appointment of a second special counsel to investigate the application and renewals of a FISA warrant against former Trump Campaign advisor Carter Page. Cafasso Decl. Ex. 4 ("Senate Letter"). The senators went on to state that they "believe that the appointment should specifically cite, rely on, and follow the Department's regulations governing such an appointment" so as to "ensure that the appointment of a special counsel rests on a clear, well-defined predicate and scope, and to give the American people the fullest possible confidence in his or her independence and authority." *Id.* at 2.

On March 29, 2018, Attorney General Sessions responded to all three Chairmen's call for "the appointment of a Special Counsel to review certain prosecutorial and investigative determinations made by the Department of Justice in 2016 and 2017." *See* Letter from Jeff Sessions, Attorney General, U.S. Dep't of Justice, to Chuck Grassley, Chairman, U.S. Senate, Comm. on the Judiciary, Bob Goodlatte, Chairman, U.S. House of Representatives, Comm. on the Judiciary & Trey Gowdy, Chairman, U.S. House of Representatives, Comm. on Oversight & Government Reform (Mar. 29, 2018) (found in Brinkmann Decl. Ex. A at 25–28) ("Sessions Response"). In that letter, Attorney General Sessions restated the central (and apparently facially inaccurate) proposition in the Boyd Response—that he "already [has] directed senior federal prosecutors to evaluate certain issues previously raised by the Committee." *Id.* at 27. He then added that he asked U.S. Attorney John W. Huber "to lead this effort." *Id.* Attorney General Sessions further stated that Mr. Huber is working in cooperation with the Inspector General and that the "additional matters raised in your [March Letter] fall within the scope of his existing

mandate." *Id.* at 28. The Attorney General then concluded the letter by saying he was "making your letters on this and related issues available to the Department's leadership, Inspector General Horowitz, and Mr. Huber for such action as is appropriate." *Id.*

The Department's Past Practices Regarding the Appointment of Special Prosecutors

Mr. Huber is not the first U.S. Attorney appointed as a "special prosecutor" to investigate matters outside of his immediate mandate.[2] When such appointments have been made in the past, the Department has provided clear guidance on the scope of their investigations—with directives often memorialized in writing or with public statements.

In 2003, in his role as Acting Attorney General, James Comey assigned the U.S. Attorney for the Northern District of Illinois, Patrick Fitzgerald, to look into whether the Bush White House deliberately leaked the identity of a CIA employee. *See* Cafasso Decl. Ex. 5. In doing so, Acting Attorney General Comey wrote Mr. Fitzgerald a series of letters specifically stating the matter he was to investigate and the authority delegated to him and under which he was to pursue the investigation—specifically that the investigation was of "the alleged unauthorized disclosure

[2] A "special prosecutor" is distinct from the "special counsel" for which the chairmen were calling. The Department promulgated the current iteration of the special-counsel regulations in 1999. A.G. Order No. 2232-99, 64 Fed. Reg. 37,038–44 (July 9, 1999) (to be codified at 28 C.F.R. pts. 0 & 600). In doing so the Department determined that the appointment of a special counsel is to be reserved for those matters where "the Attorney General concludes that extraordinary circumstances exist such that the public interest would be served by removing a large degree of responsibility for a matter from the Department of Justice." *Id.* at 37,038. The extraordinary nature of the appointment is reflected in the fact that the regulations have only been invoked twice in their twenty-year history. *See* Sessions Response at 27. But, as Attorney General Sessions noted in his response to the three congressional chairmen, "in high-profile circumstances involving other politically sensitive matters, it has been more common to make special arrangements within the Department to ensure that actual or apparent conflicts can be avoided, while experienced and accountable prosecutors conduct an efficient and appropriate investigation that comports with the interests of justice and with the public interest." *Id.* In appointing special prosecutors in these "high-profile circumstances," Attorneys General have relied on some of the same statutory provisions that provide the basis for the special-counsel regulations. *See* 28 U.S.C. §§ 510, 515; *see also* Cafasso Decl. ¶ 6; Cafasso Decl. Ex. 5.

of a CIA employee's identity." Cafasso Decl. ¶ 6; Cafasso Decl. Ex. 5. Mr. Fitzgerald's appointment and the nature of his investigation were publicly reported at the time. Cafasso Decl. Ex. 6.

In 2008, after a report by the Department's Office of the Inspector General and the Office of Professional Responsibility found that inappropriate political pressure led to the mass firing of U.S. Attorneys, Attorney General Michael Mukasey appointed the Acting U.S. Attorney for the District of Connecticut, Nora Dannehy, to investigate the matter further to determine whether criminal charges should be brought. *See* Cafasso Decl. Ex. 7. Specifically, Attorney General Mukasey provided clear direction to Ms. Dannehy to pick up where the 392-page report left off—"to assess the facts uncovered, to conduct further investigation as needed, and ultimately to determine whether any prosecutable offense was committed with regard to the removal of a U.S. Attorney or the testimony of any witness related to the U.S. Attorney removals"—as memorialized in a publicly released statement. *See id.* Ms. Dannehy's appointment and the nature of her investigation were publicly reported at the time. *See* Cafasso Decl. Ex. 8.

Also in 2008, Attorney General Mukasey tasked the then-Deputy U.S. Attorney for the District of Connecticut, John Durham, to investigate the destruction of interrogation videotapes by the CIA. *See* Cafasso Decl. Exs. 9 & 10. In 2009, Attorney General Eric Holder expanded Mr. Durham's mandate to include "a preliminary review into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations," *see* Cafasso Decl. Ex. 11—again memorialized in publicly released statements, *see* Cafasso Decl. Ex. 12.

In 2010, Mr. Fitzgerald, still serving as U.S. Attorney for the Northern District of Illinois, was tasked by written appointment with supervising an investigation into "whether criminal charges are appropriate in connection with any matter arising out of the Department of Defense

seizures of certain photographs from Guantanamo Bay detainees." *See* Cafasso Decl. Ex. 13. Over the course of the investigation, Mr. Fitzgerald received at least two more letters supplementing and amending the scope of his investigation and clarifying the authority under which he did so. *See* Cafasso Decl. Exs. 14 & 15.

American Oversight's FOIA Requests and the Instant Litigation

Shortly after the Boyd Response was sent to Congress, Plaintiff American Oversight submitted four FOIA requests to Defendant on November 22, 2017, seeking records that would inform the public as to the nature and scope of the new investigation that the agency was undertaking. *See* Brinkmann Decl. Ex. B. One of those requests sought from the Office of the Attorney General, the Office of the Deputy Attorney General, and the Office of Legislative Affairs:

> Records sufficient to identify all of the "senior federal prosecutors" who have been "directed" "to evaluate certain issues raised in [Congressman Robert Goodlatte's] letters," as indicated in the Department of Justice's November 13, 2017 response signed by Assistant Attorney General Stephen Boyd, attached for your convenience.

See id. at 74–81 ("Prosecutors FOIA"). Another request sought from the Office of the Attorney General and the Office of the Deputy Attorney General:

> All guidance or directives provided to the "senior federal prosecutors" who have been "directed" "to evaluate certain issues raised in [Congressman Robert Goodlatte's] letters," as indicated in the Department of Justice's November 13, 2017 response signed by Assistant Attorney General Stephen Boyd, attached for your convenience, regarding their performance of that task.

See id. at 66–73 ("Guidance FOIA").

On February 12, 2018, after the Department failed to make a timely determination as required by law, American Oversight initiated the instant litigation to require the Department to

promptly make reasonable efforts to search for records responsive to the four FOIA requests and to promptly produce all non-exempt, responsive records. *See* Compl., ECF No. 1. The Department filed its Answer on March 22, 2018. *See* Answer, ECF No. 7. On July 16, 2018, the Department issued its final determination for both the Prosecutors FOIA and the Guidance FOIA. *See* Brinkmann Decl. Ex. D. The Department produced the Sessions Response to satisfy the Prosecutors FOIA and stated that, with respect to the Guidance FOIA, aside from the Boyd Response, "no additional records responsive to [American Oversight's] request were identified." *Id.* at 89.

During the course of this litigation, the parties narrowed their dispute to the adequacy of the agency's searches for records responsive to the Prosecutors FOIA and the Guidance FOIA. Brinkmann Decl. ¶ 8. On November 16, 2018, the Department moved for summary judgment. *See* Def.'s Mot. for Summ. J., ECF No. 16. In light of the Department's sworn declaration that the representation to Congress that the Attorney General had directed "senior federal prosecutors" (plural) to undertake a review of the matters raised in the July and November Letters was inaccurate, *see* Brinkmann Decl.¶ 14, American Oversight discretionarily withdraws its challenge to the adequacy of the search for records responsive to the Prosecutors FOIA. American Oversight, however, continues to oppose the Department's motion and cross-moves for summary judgment with respect to the adequacy of the search for records responsive to the Guidance FOIA.

ARGUMENT

The Department asks American Oversight and the Court to believe that *no records* were created in the course of tasking a U.S. Attorney to investigate some indefinite subset of no fewer than fifteen itemized questions—all of which were outside of his statutorily defined jurisdiction

as the federal prosecutor for Utah—posed by the chairmen of three committees of the United States Congress that required the Attorney General himself to respond in writing. Not only is this inconsistent with the previous manner by which the Department assigned special prosecutors but there are also positive indications that responsive records were omitted. The Department has failed to conduct an adequate search, and summary judgment in favor of American Oversight is appropriate.

I. Legal Standards

Summary judgment is appropriate when the record as a whole demonstrates that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment on the adequacy of an agency's search may only be granted if the agency demonstrates "beyond material doubt that its search was reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (internal quotation marks omitted). "[T]he agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of the Army* ("*Oglesby I*"), 920 F.2d 57, 68 (D.C. Cir. 1990). An agency "cannot limit its search to only one or more places if there are additional sources that are likely to turn up the information requested." *Valencia-Lucena*, 180 F.3d at 326 (internal quotation marks omitted). If a review of the agency's affidavit "raises substantial doubt, particularly in view of 'well defined requests and positive indications of overlooked materials,' summary judgment [in favor of the agency] is inappropriate." *Id.* (quoting *Founding Church of Scientology v. Nat'l Sec. Agency*, 610 F.2d 824, 837 (D.C. Cir. 1979)) (citing *Oglesby v. U.S. Dep't of the Army* ("*Oglesby II*"), 79 F.3d 1172,

1185 (D.C. Cir. 1996)); *Krikorian v. U.S. Dep't of State*, 984 F.2d 461, 468 (D.C. Cir. 1993); *Weisberg v. U.S. Dep't of Justice*, 627 F.2d 365, 369–70 (D.C. Cir. 1980)).

II. The Department Did Not Adequately Describe or Support Its Search.

To begin with, the Department of Justice has failed to provide the Court or the parties with declarations providing a sufficiently detailed account of its search to permit evaluation of the adequacy of the search. Rather, the limited information provided regarding the search raise additional questions necessary to evaluate the conduct of the search. Even before reaching the question of whether the search actually conducted was adequate, these deficiencies prevent American Oversight and the Court from meaningfully evaluating the adequacy of the Department's search.

With respect to the search of the Office of the Attorney General, for instance, Defendant's declaration provides a conclusory description of events that simply raises additional questions. When did Attorney General Sessions task Mr. Huber with his new assignment? How many "meetings and discussions" were there "among a small group of Department officials"? What was the scope of the "discussions with Mr. Huber himself" to ensure that he considered all means of conveyance of guidance and directives? *See* Brinkmann Decl. ¶ 15.

Moreover, given the Department's primary reliance on assertions by a specific official within the Office of the Attorney General, *see id.* ¶¶ 14-16, it would be appropriate for that official—the then-Chief of Staff to the Attorney General—to submit a declaration supporting the adequacy of the Department's search. Indeed, this is exactly what other agencies have done in instances where the search for records relies on the representations of high-ranking officials like an agency head's Chief of Staff. *See*, *e.g.*, Decl. of Ryan Jackson, C*tr. for Biological Diversity Inc. v. U.S. Envtl. Prot. Agency*, No. 17-cv-816 (D.D.C. Apr. 11, 2018) ECF No. 22-5 (submitted

by Chief of Staff to EPA Administrator regarding search and production of records requested under FOIA). And yet in this case, the Department's declaration does not even indicate whether the officials with whom the declarant conferred reviewed the document for accuracy.

Similarly, the vagueness of the declaration's description of the "search" of the Office of the Deputy Attorney General raises more questions regarding the adequacy of the search than it answers. Ms. Brinkmann declares that she

> took the additional step of conferring with the Office of the Deputy Attorney General . . . regarding the information provided to me by [the Office of the Attorney General]. As a result of this discussion, I concluded that the [Office of the Attorney General] information regarding the lack of written guidance or directives to Mr. Huber was adequate and that further searches would be unlikely to identify records relevant to Plaintiff's request.

Brinkmann Decl. ¶ 15. This description fails to resolve basic questions about the search, such as with whom in the Office of the Deputy Attorney General she conferred, when the conferral occurred, and what the person (or those persons) said in response to lead her to such a conclusion.

The declaration also fails to address important facts about the purported search. For instance, in asserting that the specific parameters of a high-profile investigation into the president's political opponents and the Department itself were relayed only orally to Mr. Huber, *see* Brinkmann Decl. ¶ 15, the declaration does not state that OIP clarified obvious questions about potential records raised by that claim, such as whether there were notes or talking points prepared for the alleged "meetings and discussions" that contained written guidance about the investigations, or the factual basis for the then-Chief of Staff to the Attorney General's knowledge about what records other participants in the meeting had used, including responsive notes or talking points. Nor does the declaration make clear that OIP clarified the inconsistency

between the claim that there were no written materials exchanged with Mr. Huber addressing the scope of his investigation, and thus that "further searches would be unlikely to identify records relevant to Plaintiff's request," *see* Brinkmann Decl. ¶ 15, with the fact that the Department told Congress that the Attorney General had made the chairmen's letters "available to . . . Mr. Huber," Sessions Response at 28. These material lacuna reflect the insufficiency of the search. At a minimum, the deficient description of the search purportedly conducted precludes summary judgment in favor of the Defendant.

III. The Department Failed to Conduct an Adequate Search for Records.

Based on the information that is available in the Department's search declaration, unless the agency has too narrowly interpreted the request, it is simply not credible that there are no responsive records to the Guidance FOIA given the nature of Mr. Huber's supposed assignment as well as the Department's documented prior practice in delegating responsibility to undertake an investigation to a special prosecutor that would otherwise fall outside their ordinary mandate.

A. It Is Not Credible that U.S. Attorney Huber Would Be Directed to Undertake a Complex Investigation of the High-Profile and Sensitive Matters Raised in the July and September Letters Without Any Written Guidance Regarding the Scope of His Review.

The agency bears the burden of showing that it conducted a good-faith search reasonably calculated to identify the requested records. To establish that it has conducted an adequate search, an agency must do more than "generally assert[] adherence to the reasonableness standard." *Morley v. Cent. Intelligence Agency*, 508 F.3d 1108, 1122 (D.C. Cir. 2007). Given both the nature of the sensitive, complex, and high-profile matters Mr. Huber has reportedly been assigned to review and the Department's well-established practice of memorializing the appointment of special prosecutors through written directives and public statements, the

Department's assertion that its search was adequate—despite uncovering no written guidance—does not hold water.

The duties of a U.S. Attorney are statutorily defined. "Within his district," a U.S. Attorney is to prosecute criminal offenses; prosecute and defend civil actions for the government; appear in behalf of defendants in customs actions; prosecute tax violations; and "make such reports as the Attorney General may direct." 28 U.S.C. § 547. Thus a U.S. Attorney's criminal responsibilities are generally to investigate and prosecute crimes occurring in his district. However, the law also provides that the Attorney General may delegate, "as he considers appropriate," any of his duties or functions to another officer, employee, or agency of the Department. 28 U.S.C. § 510. In the course of such delegation, "when *specifically directed* by the Attorney General," a special prosecutor may "conduct any kind of legal proceeding . . . which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought." 28 U.S.C. § 515(a) (emphasis added).

Consequently, as U.S. Attorney for the District of Utah, it is unlikely that Mr. Huber would have statutory authority to undertake a review of any of the matters raised in the July and September Letters unless he had been "specifically directed" by the Attorney General to do so. In this context, particularly given the high-profile, complex, and sensitive nature of the matters he has purportedly been directed to investigate, it is simply not credible that he has received no written guidance, formal or informal, to identify or clarify the scope of the investigation the Attorney General has assigned to him.

The letters sent by Congress raised numerous complex, overlapping, and sensitive matters that the authors believed merit serious and thorough investigation by the Department.

The July Letter broadly articulates fourteen separate lines of inquiry—including items of such specificity as "2) The shadow cast over our system of justice concerning Secretary Clinton and her involvement in mishandling classified information." July Letter at 15–16. The September Letter introduces new concerns regarding Director Comey, specifically "that Director Comey and other senior Justice Department and government officials may have pre-judged the 'matter' before all the facts were known, thereby ensuring former Secretary Clinton would not be charged for her criminal activity." September Letter at 21.

The Boyd Response replies to both the July and September Letters by summarizing the fifteen separate items they raise as: "the sale of Uranium One, alleged unlawful dealings related to the Clinton Foundation and other matters." Boyd Response at 23. In responding to the Chairman's request for the appointment of a second special counsel, the Boyd Response states, "the Attorney General has directed senior federal prosecutors to evaluate certain issues raised in your letters." *Id.* The Boyd Response does not identify the "certain issues" that the Attorney General directed be investigated. *See id.* at 23–24.[3]

In March 2018, new concerns arose bringing Chairman Trey Gowdy of the House Oversight and Government Reform Committee to join Chariman Goodlatte in a call for a special counsel. The March Letter lacks the precision of the airing of grievances found in the July and

[3] Although the "certain issues" are omitted, American Oversight notes that there are three questions from the July Letter that touch on "the sale of Uranium One" and "alleged unlawful dealings related to the Clinton Foundation. July Letter at 16. ("6) WikiLeaks disclosures concerning *the Clinton Foundation* and its potentially unlawful international dealings; 7) Connections between the Clinton campaign, or *the Clinton Foundation*, and foreign entities, including those from Russia and Ukraine; 8) Mr. Comey's knowledge of the purchase of *Uranium One* by the company Rosatom, whether the approval of the sale was connected to any donations made to *the Clinton Foundation*, and what role Secretary Clinton played in the approval of that sale that had national security ramifications") (emphasis added). None of these three questions touch on the topic of the FISA warrant process.

September Letters but does suggest that the Department and the FBI inappropriately used political opposition research and the FISA warrant process in the course of its decisionmaking in 2016 and 2017. *See* March Letter. The Sessions Response assures the chairmen that "[t]he additional matters raised in your March 6, 2018, letter fall within the scope of [Mr. Huber's] existing mandate," and that the Attorney General made their "letters on this and related issues available to . . . Mr. Huber for such action as is appropriate." Sessions Response at 28.

Despite indicating to Congress that Mr. Huber's review had a broad and extant mandate—clear enough to say with certainty that U.S. Attorney Huber would already know the new concerns raised in the March Letter fell within his assignment—the Department's search results in response to the Guidance FOIA claim that Mr. Huber has received no written directives or guidance of any kind regarding the scope of this momentous undertaking that the Attorney General has assigned to him. But the notion that the Department of Justice would assign a special prosecutor to undertake an investigation of such self-evidently significant and high-profile matters without the authority or clarity provided by a written mandate defies belief. It likewise defies common sense that any serious prosecutor would agree to undertake a matter outside his ordinary remit and of such clear significance without the sort of clear lines of authority and clear definition of the scope of his mandate that can only be provided in writing. This explains why, as described more fully *infra* Part III.B, the Department's past practice has consistently been to provide a clear statement regarding the scope of the investigation assigned to a special prosecutor in high-profile matters.

The need here for the level of authority and clarity that can only be conferred in writing is all the stronger in that the matters identified in the July and September Letters overlap with allegations that the Department has already referred to its Office of Inspector General. In

February 2018, Attorney General Sessions stated that he had referred questions regarding the FBI's handling of FISA warrant applications to the Department's Inspector General—a referral contemporaneously acknowledged by the internal watchdog. *See* Cafasso Decl. Ex. 16. Given the complications introduced by potentially overlapping investigations, a clearly defined delegation of authority is all the more important to deconflict Mr. Huber's and the Inspector General's respective investigative efforts. To be sure, the Sessions Response does state that "Mr. Huber is conducting his work . . . in cooperation with the Inspector General." Sessions Response at 28. But surely it cannot be that the scope of work of the two Department attorneys is so co-extensive that they are identical, not when the Department in two separate letters to congressional committee chairmen—with one signed by the Attorney General himself—suggested that a special prosecutor had been appointed to investigate matters into which Congress was calling for a special prosecutor.

The nature of the matters purportedly assigned to Mr. Huber further underscore the incredible nature of the suggestion that Mr. Huber was assigned to undertake a matter of this magnitude based on "meetings and discussions." *See* Brinkmann Decl. ¶ 15. If Mr. Huber's investigation were to bear fruit and result in a prosecution, it would be a matter of monumental significance to our nation. President Trump's Department of Justice would literally be using the powers of law enforcement to prosecute the president's former political opponent and others he claims were unlawfully conspiring against his election from within the Department, including the FBI, following a line of inquiry laid out in the president's tweets. If the Department of Justice is truly launching an investigation of such matters, surely it would take care to dot every "i" and cross every "t" to mitigate the inference that the Department was being used as a tool to pursue the president's partisan interests. The notion that the Department would embark on such a

momentous endeavor without the clarity or clear authority provided by written guidance beggars belief. The significant reliance of the Department's purported search on the indirect assertions of one self-interested participant in these efforts in concluding that no responsive records exist indicates that the search was neither credible nor adequate.

B. The Department's Claimed Lack of Records Is Not Credible in Light of Its Documented Prior Practice in Appointing a Special Prosecutor.

These concerns explain precisely why the Department has a consistent practice, when directing a special prosecutor to undertake a high-profile and potentially controversial investigation outside the prosecutor's ordinary remit, of making the appointment with a written assignment of clearly defined duties and/or a public announcement of the appointment together with a clearly defined and discrete investigative mandate. Thus, prior to Mr. Huber's assignment, when directing Department attorneys to undertake special matters outside their remit, even matters of lower profile and less politically sensitive than the matters raised by the July and September Letters, the appointment of those Department attorneys as special prosecutors has involved a combination of such a written assignment and/or public announcement.

Thus, when U.S. Attorney Patrick Fitzgerald was assigned to look into whether any executive branch officials deliberately leaked the identity of a CIA employee, he received a series of letters specifically describing the scope of his mandate and stating in detail the particular matter or matters he was directed to investigate. Cafasso Decl. Ex. 5. When Acting U.S. Attorney Nora Dannehy was tasked with investigating the mass firing of U.S. Attorneys, her appointment was publicly announced by the Attorney General and her express mandate was to pick up where a more than 350-page Department report left off, conduct a criminal investigation, and evaluate whether any criminal charges were appropriate. Cafasso Decl. Ex. 7. When Deputy U.S. Attorney John Durham was tasked with investigating the destruction of

videotapes by the CIA, the scope of his mandate was specifically tied to an investigation recommendation from the Department's National Security Division, and both the recommendation and his appointment were publicly reported. Cafasso Decl. Exs. 9 & 10. When Mr. Durham's mandate was expanded twenty months later, it was again specifically detailed and publicly reported. Cafasso Decl. Exs. 11 & 12. And when Mr. Fitzgerald was tapped again to serve as a special prosecutor—this time to investigate "any matter arising out of the Department of Defense seizures of certain photographs from Guantanamo Bay detainees"—he was again tasked with such authority and clear designation of his mandate by way of multiple letters expressly delineating the scope of his new assignment. Cafasso Decl. Exs. 13, 14, & 15.

In light of this pattern of Department practice, it would be anomalous indeed if the Attorney General here specifically directed Mr. Huber to undertake an investigation into serious allegations of misconduct against the president's political opponents and even against the Department itself, including the FBI, with no more record of the delegation than a phone call. Ninety-two years ago the Supreme Court declared that the government is entitled to a "presumption of regularity" in the performance of the official acts of public officers. *United States v. Chem. Found. Inc.*, 272 U.S. 1, 14 (1926). If the law requires the Attorney General to delegate his work through specific direction, as 28 U.S.C. § 515 does, and if the delegation of authority to special prosecutors has consistently been provided via written direction since at least the expiration of the independent counsel statute, the presumption of regularity holds that there should be a written record of Attorney General Sessions's delegation to Mr. Huber. That no record was so discovered is a positive indication of overlooked material, *Founding Church of Scientology*, 610 F.2d at 837, and supports American Oversight's position that the Department's search was inadequate.

C. The Department Is Construing the Request Too Narrowly.

The Department's inquiry to identify records responsive to the Guidance FOIA was also not reasonably calculated to locate all potentially responsive records. Plaintiff's request encompasses "[a]ll guidance or directives provided to [Mr. Huber in connection with the direction to evaluate certain issues raised in the July and September Letters] regarding [his] performance of that task," whether formal or informal. *See* Brinkmann Decl. Ex. B at 66–73. A wide range of potential records would be responsive to this request, including, to be sure, formal orders or letters directing a review, but also including more informal records of guidance or direction regarding the performance of Mr. Huber's assigned task, such as emails to Mr. Huber or his team informally addressing or clarifying the scope of his assigned duties; talking points or notes for meetings, discussions, or teleconferences with Mr. Huber discussing the fact or scope of his assignment; or notes taken by Mr. Huber during such a meeting, discussion, or teleconference reflecting his understanding of the task he has been directed to undertake. Indeed, even a communication providing the July and September Letters themselves to Mr. Huber, and any accompanying commentary, would be responsive to Plaintiff's request, insofar as those letters formed the basis for identifying the "certain issues" the Attorney General directed Mr. Huber to investigate. Even taking the Department at its word, *dubitante*, that there was only an oral communication when the Attorney General formally assigned Mr. Huber to undertake this momentous assignment, the Department failed to search for other informal guidance or direction that would be responsive to Plaintiff's request.

Rather, the limited nature of the Department's "search" was not reasonably calculated to find all such records.[4] Reliant as the inquiry was on the recollection of individuals, there is no reason to think it would locate the sorts of informal guidance or direction to Mr. Huber regarding the performance of his investigation called for by the request. Even if it could possibly be reasonable to expect the Attorney General's chief of staff to recall if an Attorney General Order was issued regarding Mr. Huber's assignment, there is no way he could reasonably be expected to know if any of the at least five officials involved in the meeting, discussion, or teleconference with Mr. Huber, *see* Brinkmann Decl. ¶ 15, as well as other Department officials involved in the assignment, exchanged any emails with Mr. Huber or his senior staff that contained responsive guidance, direction, or clarification regarding his assigned task. The fact that the July and September Letters themselves were almost surely conveyed to Mr. Huber, but the "search" failed to identify that record, underscores the inadequacy of the purported search. The Sessions Response itself makes clear that such records exist; Attorney General Sessions closes his letter by stating: "I am making your letters on this and related issues available to . . . Mr. Huber for such action as is appropriate." Sessions Response at 28. Of course, any communication from Department leadership making these letters available to Mr. Huber and directing him to take such action as is appropriate would be responsive to Plaintiff's request. Such a positive indication of overlooked records supports the conclusion that the Department's search was inadequate. *See Valencia-Lucena*, 180 F.3d at 326 (citations omitted).

[4] As discussed above, American Oversight is limited in its ability to know the bounds of the Department's search. Reminiscent of the children's game of "Telephone," Ms. Brinkmann spoke with someone who spoke to the then-Chief of Staff to the Attorney General and Mr. Huber. What question or series of questions that someone asked the then-Chief of Staff to the Attorney General and Mr. Huber, any attempts, if any, that someone took to refresh the recollections of the then-Chief of Staff to the Attorney General and Mr. Huber, or how these inquiries were made are unknown. *See* discussion *supra* Section II.

Even if Mr. Huber was not given any written directives or guidance of any kind, an adequate search would still require that the Department search for and produce any responsive records from the Office of the Attorney General and the Office of the Deputy Attorney General reflecting the talking points, notes, and other records relied on by meeting attendees during the "meetings and discussions" wherein Attorney General Sessions tasked Mr. Huber with investigating "certain issues" of significant importance to three congressional chairmen. If the Attorney General of the United States can represent to Congress that he has made information "available to" his subordinates, American Oversight has every confidence that the Department can make records substantiating that statement available to the American public.

D. The Additional Search Sought by Plaintiff Would Not Be Burdensome.

Finally, it would not be difficult for the Department to complete an adequate search that would be reasonably calculated to identify all guidance or direction provided to Mr. Huber, formal or informal. For instance, a search of Mr. Huber's email account, as well as the account of his senior staff assigned to the Attorney General's review, if any, for communications with a small handful of people in the Department's leadership offices should be sufficient to identify responsive emails. Alternatively, the email accounts of a small number of officials in the leadership offices could be searched for communications with Mr. Huber. Such a search would not be onerous. As a result of the many limitations on such a search—to one or two custodians, for correspondence with a small number of officials, in a limited time frame, on limited subject matters—it is highly likely that it would yield only a limited number of potentially responsive communications to be processed. Likewise, a handful of people could be asked for notes or talking points from the "meetings and discussions among a small group of Department officials" where the direction or guidance was purportedly conveyed, *see* Brinkmann Decl. ¶ 15, given the

small number of attendants identified,. These limited efforts could provide Plaintiff and the American people with clarity regarding the nature of the controversial investigation that the Attorney General has directed Mr. Huber to undertake into the president's political opponents and into allegations of misconduct by the Department and the FBI.

CONCLUSION

For the foregoing reasons, Plaintiff American Oversight respectfully requests that this Court deny Defendant's motion for summary judgment, grant American Oversight's cross-motion for summary judgment and require the Department to conduct a new search for records responsive to the Guidance FOIA.

Dated: December 13, 2018

Respectfully submitted,

/s/ Cerissa Cafasso
Cerissa Cafasso
D.C. Bar No. 1011003
Austin R. Evers
D.C. Bar No. 1006999

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Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN OVERSIGHT, *Plaintiff*, v. U.S. DEPARTMENT OF JUSTICE, *Defendant*.	)	Case No. 18-cv-319 (CRC)

PROPOSED ORDER

Upon consideration of Plaintiff's Cross-Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgment, as well as the entire record, it is hereby

ORDERED that Plaintiff's Cross-Motion for Summary Judgment is **GRANTED**.

It is further **ORDERED** that Defendant's Motion for Summary Judgment is **DENIED.**

It is further **ORDERED** that Defendant shall conduct supplemental searches for all records sought in Plaintiff's FOIA request. Defendant shall review 500 potentially responsive records per month after the search has been completed and any duplicate records have been removed and shall produce any non-exempt materials to Plaintiff on a monthly rolling basis beginning no later than 30 days after the search is complete.

SO ORDERED.

Date: _____

_____
CHRISTOPHER R. COOPER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN OVERSIGHT, *Plaintiff*, v. U.S. DEPARTMENT OF JUSTICE, *Defendant*.	)	Case No. 18-cv-319 (CRC)

DECLARATION OF CERISSA CAFASSO
IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, CERISSA CAFASSO, hereby declare as follows:

1. I am an attorney at American Oversight, the plaintiff in the above-captioned litigation. I submit this Declaration in support of Plaintiff's Cross-Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment. The facts set forth in this Declaration are true and of my own personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of an advisory from the U.S. Department of Justice entitled *Attorney General Jeff Sessions Will Testify at the House Judiciary Committee Hearing* as found on the Department's website at https://www.justice.gov/archives/opa/event/attorney-general-jeff-sessions-will-testify-house-judiciary-committee-hearing.

3. Attached hereto as Exhibit 2 is a true and correct copy of the November 14, 2017 article by Nicholas Fandos, Matt Apuzzo, and Charlie Savage on the *New York Times*'s website entitled *Jeff Sessions Displays Unsteady Recall on Trump-Russia Matters* as found at https://www.nytimes.com/2017/11/14/us/politics/jeff-sessions-congress-russia.html.

4. Attached hereto as Exhibit 3 is a true and correct copy of the March 6, 2018 letter sent to Attorney General Jeff Sessions and Deputy Attorney General Rosenstein by Bob Goodlatte, Chairman of the U.S. House of Representatives Committee on the Judiciary, and Trey Gowdy, Chairman of the U.S. House of Representatives Committee on Oversight and Government Reform as found on the Committee on Oversight and Government Reform's website at https://oversight.house.gov/wp-content/uploads/2018/03/Goodlatte-Gowdy-special-counsel-letter.pdf.

5. Attached hereto as Exhibit 4 is a true and correct copy of the March 15, 2018 letter sent to Attorney General Jeff Sessions and Deputy Attorney General Rosenstein by Chuck Grassley, Chairman of the U.S. Senate Committee on the Judiciary, and three other members of the committee as found on the committee's website at https://www.judiciary.senate.gov/imo/media/doc/2018-03-15%20CEG%20LG%20JC%20TT%20to%20AG%20DAG%20(Special%20Counsel).pdf.

6. Attached hereto as Exhibit 5 is a true and correct copy of correspondence and a transcript of a press conference related to Acting Attorney General James Comey's appointment of the U.S. Attorney for the Northern District of Illinois, Patrick Fitzgerald, to investigate the alleged unauthorized disclosure of a CIA employee's identity as found on the Department's website at https://www.justice.gov/archive/osc/documents/2006_03_17_exhibits_a_d.pdf. In the correspondence dated December 30, 2003, Acting Attorney General Comey specifically invokes statutory authority, "including 28 U.S.C. §§ 509, 510, and 515," to "delegate to [U.S. Attorney Patrick Fitzgerald] all the authority of the Attorney General with respect to the Department's investigation into the alleged unauthorized disclosure of a CIA employee's identity."

7. Attached hereto as Exhibit 6 is a true and correct copy of the January 1, 2004 article by David Johnston on the *New York Times*'s website entitled *Large File of Evidence Is Available in Leak Case* as found at https://www.nytimes.com/2004/01/01/us/large-file-of-evidence-is-available-in-leak-case.html.

8. Attached hereto as Exhibit 7 is a true and correct copy of the September 29, 2008 statement from the U.S. Department of Justice entitled *Statement by Attorney General Michael B. Mukasey on the Report of an Investigation into the Removal of Nine U.S. Attorneys in 2006* as found on the Department's website at https://www.justice.gov/archive/opa/pr/2008/September/08-opa-859.html.

9. Attached hereto as Exhibit 8 is a true and correct copy of the September 29, 2008 article by Eric Lichtblau and Sharon Otterman on the *New York Times*'s website entitled *Special Prosecutor Named in Attorney Firings Case* as found at https://www.nytimes.com/2008/09/30/washington/30attorney.html.

10. Attached hereto as Exhibit 9 is a true and correct copy of the January 2, 2008 statement from the U.S. Department of Justice entitled *Statement by Attorney General Michael B. Mukasey Regarding the Opening of an Investigation into the Destruction of Videotapes by CIA Personnel* as found on the Department's website at https://www.justice.gov/archive/opa/pr/2008/January/08_opa_001.html.

11. Attached hereto as Exhibit 10 is a true and correct copy of the January 3, 2008 article by Dan Eggen and Joby Warrick on the *Washington Post*'s website entitled *Criminal Probe on CIA Tapes Opened* as found at http://www.washingtonpost.com/wp-dyn/content/article/2008/01/02/AR2008010202060.html.

12. Attached hereto as Exhibit 11 is a true and correct copy of the August 24, 2009 statement from the U.S. Department of Justice entitled *Attorney General Eric Holder Regarding a Preliminary Review into the Interrogation of Certain Detainees* as found on the Department's website at https://www.justice.gov/opa/speech/attorney-general-eric-holder-regarding-preliminary-review-interrogation-certain-detainees.

13. Attached hereto as Exhibit 12 is a true and correct copy of the August 25, 2009 article by Siobhan Gorman, Peter Spiegel, and Cam Simpson on the *Wall Street Journal*'s website entitled *Special Prosecutor to Probe CIA Handling of Terror Suspects* as found at https://www.wsj.com/articles/SB125111559865553571.

14. Attached hereto as Exhibit 13 is a true and correct copy of March 8, 2010 correspondence from Jay Macklin, General Counsel for the Executive Office for the United States Attorneys, and Patrick Fitzgerald, U.S. Attorney for the Northern District of Illinois, regarding the appointment of Mr. Fitzgerald to "investigate and determine whether criminal charges are appropriate in connection with any matter arising out of the Department of Defense seizures of certain photographs from Guantanamo Bay detainees" as found at http://www.emptywheel.net/wp-content/uploads/2012/01/100308-PJF-special-atty-3-8-10.pdf.

15. Attached hereto as Exhibit 14 is a true and correct copy of July 14, 2010 correspondence from Jay Macklin, General Counsel for the Executive Office for the United States Attorneys, and Patrick Fitzgerald, U.S. Attorney for the Northern District of Illinois, regarding Mr. Fitzgerald's March 2010 appointment as found at http://www.emptywheel.net/wp-content/uploads/2012/01/100714-PJFitzgerald-appt-as-Special-Atty.pdf.

16. Attached hereto as Exhibit 15 is a true and correct copy of May 27, 2011 correspondence from Jay Macklin, General Counsel for the Executive Office for the United

States Attorneys, and Patrick Fitzgerald, U.S. Attorney for the Northern District of Illinois, regarding Mr. Fitzgerald's March 2010 appointment as found at http://www.emptywheel.net/wp-content/uploads/2012/01/110527-PJF-special-atty-5-27-11.pdf.

17. The correspondence in Exhibits 13, 14, and 15 were found linked through a January 27, 2012 blog post at *emptywheel* entitled *The Evolution of Patrick Fitzgerald's Investigation into Torturer Disclosures* as found at https://www.emptywheel.net/2012/01/27/the-evolution-of-patrick-fitzgeralds-investigation-into-torturer-disclosures/.

18. Attached hereto as Exhibit 16 is a true and correct copy of the February 27, 2018 article by Laura Jarrett on CNN's website entitled *Sessions Says Internal Watchdog Looking at Allegations of FISA Abuse* as found at https://www.cnn.com/2018/02/27/politics/sessions-fisa-fbi-justice-carter-page-nunes-memo/index.html.

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 13, 2018

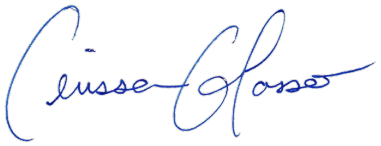

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EXHIBIT 1

ATTORNEY GENERAL JEFF SESSIONS WILL TESTIFY AT THE HOUSE JUDICIARY COMMITTEE HEARING

Location:
United States House Committee on the Judiciary
Washington, DC
United States

Date & Time:
Tuesday, November 14, 2017 - 10:00am ET

Press Information:
OPEN PRESS

Updated November 9, 2018

EXHIBIT 2

Jeff Sessions Displays Unsteady Recall on Trump-Russia Matters

By NICHOLAS FANDOS, MATT APUZZO and CHARLIE SAVAGE NOV. 14, 2017

Attorney General Jeff Sessions testifying before the House Judiciary Committee, where he was questioned about campaign contacts with Russians during the 2016 election.

By THE ASSOCIATED PRESS. Photo by Al Drago for The New York Times. Watch in Times Video »

• Attorney General Jeff Sessions, testifying before the House Judiciary Committee, showed selective recall on the Trump campaign's Russia contacts.

• Mr. Sessions said he had "no reason to doubt these women" who have accused the man who wants his old Senate seat, Roy S. Moore, of seeking sexual or romantic favors from them as teenagers.

• Mr. Sessions was asked about his direction that the department consider a special counsel to investigate Mr. Trump's political opponents, including Hillary Clinton.

Sessions: I don't recall Russia reports, but I shot down Trump-Putin meeting.

Mr. Sessions denied that he lied in October when he testified that he knew of nobody in the Trump campaign who had contacts with Russians during the presidential campaign. "And I don't believe it happened," he said.

Court records later revealed that Mr. Sessions led a March 2016 meeting in which George Papadopoulos, a campaign aide, discussed his Russian ties and suggested setting up a meeting between Mr. Trump. and Vladimir V. Putin, the Russian president.

A photo from a national security meeting that Mr. Sessions attended with George Papadopoulos during the presidential campaign was shown during the hearing. Al Drago for The New York Times

"I had no recollection of this meeting until I saw these news reports," Mr. Sessions said.

Mr. Sessions testified Tuesday that was still hazy on the details about what Mr. Papadopoulos had proposed.

But on one matter, he said his memory is clear: he said he shot down Mr. Papadopoulos' idea of a Trump-Putin meeting. And he said he told Mr. Papadopoulos that he was not authorized to represent the campaign in such discussions.

To sum up: Mr. Sessions said he could not remember much about Russian influence on the Trump campaign, except when he could block such influence.

Applying the Sessions standard on perjury to ... Jeff Sessions.

As Democrats repeatedly put heat on Mr. Sessions over the evolution of his testimony before Congress, Representative Hakeem Jeffries, Democrat of New York, invoked an unexpected ostensible ally: Senator Jeff Sessions.

Holding up a speech he said Mr. Sessions had given on the Senate floor during the proceedings to remove President Bill Clinton from office, Mr. Jeffries said Mr. Sessions had then justified his vote for removal by saying that he would not hold the president to a different standard than a young police officer he had prosecuted years before for lying under oath.

"You stated that you refused to hold a president accountable to a different standard than the young police officer who you prosecuted," Mr. Jeffries said. "Let me be clear: The attorney general of the United States of America should not be held to a different standard than the young police officer whose life you ruined by prosecuting him for perjury."

Mr. Sessions vehemently disagreed with the comparison, repeatedly calling Mr. Jeffries suggestion "unfair."

"Mr. Jeffries, nobody, nobody, not you or anyone else should be prosecuted, not be accused of perjury for answering the question the way I did in this hearing," Mr. Sessions said. "I have always tried to answer the questions fairly and accurately."

Sessions says he is plugging the leaks.

Several Republican lawmakers urged Mr. Sessions to crack down on leaks. Republicans have generally responded to various Trump-Russia revelations — like the Washington Post report disclosing that a wiretap of the Russian ambassador had picked up his conversations about sanctions with Michael Flynn, then Mr. Trump's national security adviser — by saying the real scandal was the leaks.

Mr. Sessions told Rep. Bob Goodlatte, the Virginia Republican who chairs

the committee, that the leaking of classified information was "a very grave offense." He also said touted a significant increase in the number of open leak investigations.

"We had about nine open investigations of classified leaks in the last three years; we have 27 investigations open today," Mr. Sessions said. "We intend to get to the bottom of these leaks. I think it has reached epidemic proportions. It cannot be allowed to continue and we will do our best effort to ensure it does not continue."

In August, Mr. Sessions had told reporters that the Justice Department was pursuing three times the number of leak investigations as were open at the end of the Obama administration, but he had declined then to say what the specific numbers were.

(The numbers were also complicated by the fact that the department's method of tracking such cases conflates leaks to the news media with other types of unauthorized disclosures, like foreign espionage. Mr. Sessions said in August, and again on Tuesday, that there have been four such indictments this year, but only one of those — the charging of Reality Leigh Winner, a contractor working for the N.S.A., with sending an intelligence report about Russia's interference in the 2016 election to The Intercept — is a classic news media leak case.)

Later, Rep. Jamie Raskin, Democrat of Maryland, brought up Mr. Trump's accusation that the press is the "enemy of the people," said the Founders thought the free press was society's best friend, and asked Mr. Sessions to commit to not prosecuting "investigative journalists for maintaining the confidentiality of their professional sources."

(That question garbled or conflated two different issues. One is whether journalists could be jailed for contempt if they refuse to provide witness testimony when subpoenaed in connection with an investigation into or prosecution of their suspected sources. The other is whether journalists

could be prosecuted as alleged co-conspirators in a criminal leak.)

"I'll commit to respecting the role of the press and conducting my office in a way that respects that," Mr. Sessions responded. "We have not had a conflict in my term in office yet with the press but there are some things the press seems to think they have an absolute right to." but it does not, he added.

He offered no further details about where he draws the line.

A Republican-Sessions divide on government surveillance.

While the Trump campaign contacts with Russia is the main recurring theme, a separate subplot has emerged: surveillance.

The statute by which Congress legalized the Bush administration's post-9/11 warrantless wiretapping program, Section 702 of the FISA Amendments Act, is set to expire at the end of 2017 if lawmakers do not extend it.

The current law permits the government to collect from American internet companies, without a warrant, the messages of foreigners abroad who have been targeted for intelligence purposes — even when they are communicating with an American. Leaders from both parties on the House Judiciary Committee have agreed to push a bill, dubbed the USA Liberty Act, that would impose some new limitations on the surveillance program as a condition of extending it.

The Liberty Act would require government agents to obtain a warrant from a judge to scrutinize such messages when the information pertains to Americans connected to a criminal investigation, though not when it comes to a national-security investigation. The Trump administration opposes that idea.

Among others, Rep. Ted Poe, Republican of Texas, pressed Mr. Sessions

about that issue. Invoking the language of Fourth Amendment privacy rights, he noted that the information in the internet repository was seized without a warrant, and said querying the database amounts to a search. He demanded, "you don't think probable cause and a warrant is required to go into that information?"

Mr. Sessions replied that the federal courts "have so held," adding "I agree with the courts, not you, congressman, on that."

In fact, while it is true that several judges have upheld the use of evidence derived from the program in terrorism-related cases; the issue of whether evidence derived from it may be used in ordinary criminal cases — the type the Liberty Act proposal addresses — has not been adjudicated.

Mr. Poe responded: "It is the responsibility of Congress to set the privacy standard for Americans."

The Constitution supports the view that the government should get a warrant before it searches through internet databases without a warrant, he said. Otherwise, "that is spying on Americans."

Sessions abandons fellow Alabamian Roy Moore.

Mr. Sessions told the House Judiciary Committee, "I have no reason to doubt these women" who have accused Roy S. Moore of seeking sex or romance with them when they were teenagers.

Mr. Moore is seeking to fill the Alabama Senate seat that Mr. Sessions gave up when he was confirmed as attorney general. And Mr. Sessions remains a popular figure in Alabama. The attorney general's views matter in his home state.

What's more, Republican leaders in Washington are discussing whether Mr. Sessions should launch a write-in campaign to reclaim his seat. If that does not happen and Mr. Moore prevails in the Dec. 12 special election, there is

talk of expelling the jurist from the Senate and prevailing on Alabama's governor, Kay Ivey, to appoint Mr. Sessions back to the Senate.

Representative Sheila Jackson Lee, Democrat of Texas, questioned Mr. Sessions about the allegations against Roy S. Moore, the Republican nominee in a special election being held in December to fill the seat that Mr. Sessions vacated to become attorney general. Al Drago for The New York Times

The twin hearings: Russia — and anything but Russia.

Mr. Sessions' appearance before the House Judiciary Committee on Tuesday was really a twofer. There was the hearing on the Trump campaign's contacts with Russia, guided by the committee's Democrats who single-mindedly bored in on the topic.

Then there was the hearing-on-any-topic-other-than-Russia orchestrated by the committee's Republicans, which scurried over federal eavesdropping law, rising crime, immigration and Hillary Clinton.

Representative Darrell Issa, Republican of California, summed up the

Republican sentiment.

“I don’t speak Russian and I haven’t met with Russians and I don’t really want to talk about that today,” he said, before diving into questions about sober living homes.

The straight dope on marijuana use among ‘good people’

The Democrats were not exclusively concerned with Russia. During his time with the attorney general, Representative Steve Cohen, Democrat of Tennessee, paused the grilling to ask Mr. Sessions about a subject long associated with him: pot. Comedy ensued.

“You said one time that good people don’t smoke marijuana,” Mr. Cohen said. “Which of these people would you say are not good people?”

Mr. Sessions began to explain in earnest, but Mr. Cohen cut him off.

“Quickly. John Kasich, a good person? George Pataki, Rick Santorum, Newt Gingrich, Jeb Bush, Arnold Schwarzenegger, Judge Clarence Thomas — which are not good people?” he demanded, citing prominent Republicans who, ostensibly, have admitted smoking dope.

Mr. Sessions, laughing with much of the hearing room, chalked it up to context. “So the question was, what do you do about drug use, the epidemic we’re seeing in the country, and how you reverse it. Part of that is a cultural thing. I explained how when I became the United States attorney in 1981, and the drugs were being used widely, over a period of years, it became unfashionable, unpopular, and people were seeing — it was seen as such that good people didn’t use marijuana.”

And with that, Mr. Cohen’s allotted time for questioning ended.

The White House has its eye on his performance.

The White House was carefully watching Mr. Sessions's performance. The attorney general has been in hot water with the president since he decided in March to recuse himself from all matters related to Russia, leaving him without control over the special counsel, Robert S. Mueller III, who is investigating Russian efforts to meddle in the election.

Representative Robert Goodlatte, the committee's Republican chairman, appeared to pile on when he said, "While I understand your decision to recuse yourself was an effort by you to do the right thing, I believe you, as a person of integrity, would have been impartial and fair in following the facts wherever they led."

Any hiccups in Mr. Sessions's testimony would most likely only make his problems at the White House worse.

And Representative John Conyers, the top Democrat on the panel, did not make things easier for the attorney general when he asked Mr. Sessions if the president should make "public comments that might influence a pending criminal investigation."

Mr. Sessions hesitated. "He should take great care in those issues," he said, before adding a defense of Mr. Trump.

"I would say it's improper," Mr. Sessions said. "A president cannot improperly influence an investigation. And I have not been improperly influenced and would not be improperly influenced."

Debate emerges on appointing a second special counsel.

Republicans were pleased that Mr. Sessions came with good news. On Monday, the Justice Department notified the committee that senior prosecutors were looking into whether a special counsel should be appointed to investigate the Obama administration's decision to allow a Russian nuclear agency to buy Uranium One, a company that owned access

to uranium in the United States. The department will also examine whether any donations to the Clinton Foundation were tied to the approval.

Republicans are investigating the matter themselves but have been clamoring for the department to get involved. On Tuesday, Mr. Goodlatte signaled his support but said again that he wanted the department to go farther and appoint a second special counsel. He also urged Mr. Sessions to let a special counsel investigate the Clinton email case.

"There are significant concerns that the partisanship of the F.B.I. and the department has weakened the ability of each to act objectively," he said.

Democrats were incensed by the letter, which they said they did not receive. Mr. Conyers said the appointment of a new special counsel was merely to "cater to the President's political needs." He argued that there was not sufficient evidence to do so. And, he said, it smacked of "a banana republic."

Mr. Sessions said that any decisions about the investigations would be made "without regard to politics, ideology, or bias."

Representative Jim Jordan, Republican of Ohio, pressed Mr. Sessions on a litany of issues that "looks like" they need a special counsel to investigate, the attorney general was brusque: " 'Looks like' is not enough to appoint a special counsel."

Sessions is in the hot seat over Russia — again.

Mr. Sessions has twice told lawmakers under oath that as a foreign policy adviser to Mr. Trump's campaign, he did not communicate with Russians to aid Mr. Trump's candidacy, nor did he know of other members of the campaign who had.

His challenge on Tuesday will be to try to square those comments with recent revelations that at least one member of the campaign's foreign policy

council, which Mr. Sessions led, and another foreign policy adviser, had informed Mr. Sessions about their discussions with Russians at the time.

Mr. Sessions has already had his statements undercut once. After telling senators at his confirmation hearing in January that he had not had any contacts with Russians, it was revealed that Mr. Sessions held multiple meetings with a Russian ambassador during the campaign.

Now, Mr. Sessions must contend with comments he made last month, in another hearing before the Senate Judiciary Committee. "I did not, and I'm not aware of anyone else that did," Mr. Sessions told senators when asked whether he believed members of the campaign had communicated with Russians.

Democrats on the committee put Mr. Sessions on alert in a letter last week, saying that they would want clarification on "inconsistencies" between those statements and those of the two campaign advisers, George Papadopoulos and Carter Page, who have acknowledged having contact with Russians.

"Under oath, knowing in advance that he would be asked about this subject, the Attorney General gave answers that were, at best, incomplete," said Mr. Conyers. "I hope the Attorney General can provide some clarification on this problem in his remarks today."

EXHIBIT 3

Congress of the United States
House of Representatives
Washington, DC 20515

March 06, 2018

Dear Attorney General Sessions and Deputy Attorney General Rosenstein:

Matters have arisen – both recently and otherwise – which necessitate the appointment of a Special Counsel. We do not make this observation and attendant request lightly. We have tremendous respect for the women and men of federal law enforcement and federal prosecution. In the vast majority of fact patterns, the Department of Justice, the career prosecutors and law enforcement professionals who serve there, and the U.S. Attorneys' Offices throughout the country are fully capable of investigating, evaluating, charging where appropriate, and prosecuting matters for which there is federal jurisdiction.

Nevertheless, there are instances in which an actual or potential conflict of interest exists or appears to exist, or there are matters in which the public good would be furthered, and an independent Special Counsel is warranted as the relevant Federal regulations provide.

We believe that, in the case of certain decisions made and not made by the Department of Justice and FBI in 2016 and 2017, both an actual conflict of interest exists and separately, but equally significantly, the public interest requires the appointment of a Special Counsel.

With respect to potential and actual conflicts of interest, decisions made and not made by both former and current Department of Justice and FBI officials have led to legitimate questions and concerns from the people whom we all serve. There is evidence of bias, trending toward animus, among those charged with investigating serious cases. There is evidence political opposition research was used in court filings. There is evidence this political opposition research was neither vetted before it was used nor fully revealed to the relevant tribunal. Questions have arisen with the FISA process and these questions and concerns threaten to impugn both public and congressional confidence in significant counterintelligence program processes and those charged with overseeing and implementing these counterintelligence processes.

Because the decisions of both former and current Department of Justice and FBI officials are at issue, we do not believe the Department of Justice is capable of investigating and evaluating these fact patterns in a fashion likely to garner public confidence. In addition, while we have confidence in the Inspector General for the Department of Justice, the DOJ IG does not have the authority to investigate other governmental entities or former employees of the Department, the Bureau, or other agencies.

Some have been reluctant to call for the appointment of a Special Counsel because such an appointment should be reserved for those unusual cases where existing investigative and prosecutorial entities cannot adequately discharge those duties. We believe this is just such a case.

Accordingly, we request that you appoint a Special Counsel to review decisions made and not made by the Department of Justice and the FBI in 2016 and 2017, including but not limited to evidence of bias by any employee or agent of the DOJ, FBI, or other agencies involved in the investigation; the decisions to charge or not charge and whether those decisions were made consistent with the applicable facts, the applicable law, and traditional investigative and prosecutorial policies and procedures; and whether the FISA process employed in the fall of 2016 was appropriate and devoid of extraneous influence.

Thank you for your prompt attention to this important request.

Sincerely,

Bob Goodlatte
Chairman, House Judiciary Committee

Trey Gowdy
Chairman, House Oversight and Government Reform Committee

cc: Ranking Member Jerrold Nadler
Ranking Member Elijah Cummings

EXHIBIT 4

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

March 15, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Sessions and Deputy Attorney General Rosenstein:

As you know, the Department of Justice Inspector General currently is reviewing the Department's and the Federal Bureau of Investigation's handling of the Clinton email investigation.[1] Recently, the Attorney General requested that he also review questions about the Department's and the FBI's actions in seeking a Foreign Intelligence Surveillance Act (FISA) warrant against former Trump Campaign advisor Carter Page.[2] On February 28, based on reviews of related documents and facts gathered thus far in the Committee's oversight work, Chairman Grassley and Chairman Graham also requested that the Inspector General broadly review more than 30 classified and unclassified questions related to the FBI and the Department's handling of the so-called Trump/Russia investigation and related matters prior to the appointment of Special Counsel Robert Mueller.[3] For reference, we have attached the unclassified portion of that referral.

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[1] Press Release, Office of the Inspector General, U.S. Dep't of Justice, *DOJ OIG Announces Initiation of Review* (Jan. 12, 2017).
[2] Kelly Cohen, Jeff Sessions responds to Nunes memo release: 'No department is perfect', WASHINGTON EXAMINER (Feb. 2, 2018); Josh Gerstein, Sessions: Justice Department watchdog investigating GOP Russia memo claims, POLITICO (Feb. 27, 2018).
[3] Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary and Lindsey O. Graham, Chairman, Subcomm. on Crime and Terrorism, U.S. Sen. Comm. on the Judiciary to Michael Horowitz, Inspector General, U.S. Dep't of Justice (Feb. 28, 2018) (Unclassified Letter attached as Exhibit 1).

The January 4, 2018 referral of Christopher Steele requested that the Justice Department reconcile the statements he made in British libel litigation against him with contrary statements he reportedly made to the FBI, as described in the FISA application. The referral took no position as to which were true, but asked the Justice Department whether Mr. Steele misrepresented the facts to the FBI and whether the FBI inaccurately reported the facts to the court. Based on the release of the memorandum drafted by the minority staff of the House Permanent Select Committee on Intelligence, the FBI has now provided a further un-redacted version of that referral memorandum, also attached here.[4] The new version provides the public for the first time the actual quote from the FISA application that we flagged for the Justice Department as inconsistent with claims made in the British libel litigation filings.

The attached request to the Inspector General asked that he investigate issues surrounding the application and renewals of the FISA warrant. It also requested that he review potential improprieties in the FBI's relationship with Christopher Steele, the potential conflicts of interest posed by the involvement of high-ranking DOJ official Bruce Ohr in serving as the cut-out between the FBI and Mr. Steele after the FBI terminated its formal relationship with him, apparent unauthorized disclosures of classified information to the press, the FBI and DOJ's handling of the investigation of Lt. Gen. Michael Flynn, and other matters.

We have the utmost confidence in the Inspector General's integrity, fairness, and impartiality, and trust that he will complete these reviews in a thorough, unbiased, and timely fashion. However, by statute, the Inspector General does not have the tools that a prosecutor would to gather all the facts, such as the ability to obtain testimony from essential witnesses who are not current DOJ employees. Thus, we believe that a special counsel is needed to work with the Inspector General to independently gather the facts and make prosecutorial decisions, if any are merited. The Justice Department cannot credibly investigate itself without these enhanced measures of independence to ensure that the public can have confidence in the outcome.

To ensure that the appointment of a special counsel rests on a clear, well-defined predicate and scope, and to give the American people the fullest possible confidence in his or her independence and authority, we believe that the appointment should specifically cite, rely on, and follow the Department's regulations governing such an appointment, including specifically 28 C.F.R. §§ 600.1-600.4.[5]

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[4] Memorandum from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary and Lindsey O. Graham, Chairman, Subcomm. on Crime and Terrorism, U.S. Sen. Comm. on the Judiciary to Rod J. Rosenstein, Deputy Attorney General, U.S. Dep't of Justice and Christopher A. Wray, Director, Federal Bureau of Investigation (Jan. 4, 2018) (Exhibit 2).

[5] *See* 28 C.F.R. § 600 *et seq.*; If you determine that a special counsel appointment would not be necessary or appropriate under the Department's regulations, we urge you to designate a disinterested U.S. Attorney or other Justice Department prosecutor with no actual or apparent conflicts to work cooperatively with the Inspector General in his review and ensure that he has access to grand jury process and other prosecutorial tools necessary to guarantee a thorough, complete, and independent review in which the public can have total confidence.

If you are unwilling to take this step, please send us a detailed reply explaining why not. We look forward to your response.

Sincerely,

Charles E. Grassley
Chairman
Committee on the Judiciary

Lindsey O. Graham
Chairman
Subcommittee on Crime and Terrorism

John Cornyn
U.S. Senator

Thom Tillis
U.S. Senator

cc: The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary

The Honorable Sheldon Whitehouse
Ranking Member
Subcommittee on Crime and Terrorism

[redacted]

(UNCLASSIFIED when separated from attachments)

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

February 28, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

[redacted]

Dear Inspector General Horowitz:

We respectfully request that you conduct a comprehensive review of potential improper political influence, misconduct, or mismanagement in the conduct of the counterintelligence and criminal investigations related to Russia and individuals associated with (1) the Trump campaign, (2) the Presidential transition, or (3) the administration prior to the appointment of Special Counsel Robert Mueller.

Over the past year, the Department of Justice has made a number of documents relating to these issues available for review by the Chair and Ranking Member of the Senate Judiciary Committee and its Subcommittee on Crime and Terrorism. These documents have raised several serious questions about the propriety of the FBI's relationship with former British Intelligence agent Christopher Steele, including its use of allegations compiled by Mr. Steele for Fusion GPS and funded by Perkins Coie on behalf of the Democrat National Committee and the Clinton campaign. These documents also raise questions about the role of Bruce Ohr, a senior Justice Department official whose wife worked for Fusion GPS, in continuing to pass allegations from Steele and Fusion GPS to the FBI after the FBI had terminated Mr. Steele as a source.

Following the President's declassification of the memorandum prepared by the House Permanent Select Committee on Intelligence majority staff,[1] and its subsequent public release, the existence of these documents is now unclassified:

[1] Letter from Donald J. Trump, President of the United States to Devin Nunes, Chairman, House Permanent Select Committee on Intelligence (Feb. 2, 2018); *see also* Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary and Lindsey O. Graham, Chairman, Subcomm. on Crime and Terrorism, U.S. Sen. Comm. on the

[redacted]

(UNCLASSIFIED when separated from attachments)

1. An October 2016 Foreign Intelligence Surveillance Act (FISA) application relying significantly on Mr. Steele's allegations and credibility to seek surveillance of Carter Page;[2]
2. Three renewal FISA applications—dated January, April, and June of 2017—similarly relying on Mr. Steele's allegations and credibility to seek approval to surveil Mr. Page;[3]
3. A Human Source Validation Report relating to Mr. Steele;[4]
4. Numerous FD-302s demonstrating that Department of Justice official Bruce Ohr continued to pass along allegations from Mr. Steele to the FBI after the FBI suspended its formal relationship with Mr. Steele for unauthorized contact with the media, and demonstrating that Mr. Ohr otherwise funneled allegations from Fusion GPS and Mr. Steele to the FBI;[5]
5. Spreadsheets summarizing the details of interactions between Mr. Steele and the FBI, including the dates of contacts, the subject-matter of those contacts, and information relating to whether and when any payments may have been made; and
6. Form 1023s and other documents memorializing contacts between the FBI and Mr. Steele.[6]

Additional relevant documents to which the Committee was provided access to review cannot be identified in this unclassified letter. Thus, those documents are detailed more fully in the attached classified memorandum.

We request that your office review all of these documents as soon as possible. We also request that your office examine the following issues, as well as those contained in the attached classified memorandum. Finally, we request that you report to Congress, and to the greatest extent possible, the public, on your recommendations and factual findings in a manner sufficient to answer these questions:

Judiciary to Rod J. Rosenstein, Deputy Attorney General, U.S. Dep't of Justice and Christopher A. Wray, Director, Federal Bureau of Investigation (Jan. 4, 2018) and attached Memorandum re: Referral of Christopher Steele for Potential Violation of 18 U.S.C. § 1001 (version of Memorandum cleared by the FBI as unclassified following the President's declassification of the HPSCI majority staff memorandum), *available at*: https://www.judiciary.senate.gov/imo/media/doc/2018-02-06%20CEG%20LG%20to%20DOJ%20FBI%20(Unclassified%20Steele%20Referral).pdf.

[2] Page FISA Application and Order (Oct. 21, 2016).

[3] First Page FISA Renewal Application and Order (Jan. 12, 2017); Second Page FISA Renewal Application and Order (Apr. 7, 2017); Third Page FISA Renewal and Order (June 29, 2017).

[4] Human Source Validation Report, (Nov. 14, 2016).

[5] Ohr FD-302 12/19/16 (interview date 11/22/16); Ohr FD-302 12/19/16 (interview date 12/5/16); Ohr FD-302 12/19/16 (interview date 12/12/16); Ohr FD-302 12/27/16 (interview date 12/20/16); Ohr FD-302 1/27/17 (interview date 1/27/17); Ohr FD-302 1/31/17 (interview date 1/23/17); Ohr FD-302 1/27/17 (interview date 1/25/217); Ohr FD-302 2/8/17 (interview date 2/6/17); Ohr FD-302 2/15/17 (interview date 2/14/17); Ohr FD-302 5/10/17 (interview date 5/8/17); Ohr FD-302 5/12/17 (interview date 5/12/17); Ohr FD-302 5/16/17 (interview date 5/15/17).

[6] FD-1023s documenting Mr. Steele's statements to the FBI.

[redacted]

(UNCLASSIFIED when separated from attachments)

1. Who in the Department of Justice or the FBI knew that Christopher Steele's work ultimately was funded by the Democratic National Committee (DNC) and the Clinton Campaign? When did each individual learn that information?

2. Why didn't the Foreign Intelligence Surveillance Act (FISA) warrant for Carter Page, or any of its subsequent renewals, more specifically disclose the source of funding for Steele's claims?

3. What connections are there between Mr. Steele and the Russian government or Russian intelligence community? Has Mr. Steele ever been paid directly or indirectly by the Russian government, Russian intelligence community, or other Russian sources?

4. Was any consideration given to providing more information about the funding source than actually appears in the warrant and in its renewals? If not, why not?

5. What were Mr. Steele's motivations in distributing the dossier and the information in the dossier after President Trump won the election? Were these efforts coordinated in any way with employees of the FBI or DOJ?

6. Pursuant to the procedures in Rule 9(a) of the Foreign Intelligence Surveillance Court's Rules of Procedure, did the FBI or Justice Department provide the Foreign Intelligence Surveillance Court (FISC) with a proposed FISA application targeting Mr. Page while he was still affiliated with the Trump campaign? Did the FISC notify the DOJ that the warrant application was insufficient as written and required additional information? If so, why? Was the draft warrant returned with any specific feedback? If so, what was the feedback? Was the dossier information included in any draft warrant applications that might have been provided to the court? If not, when was the dossier information first presented to the court, either in draft or final form?

7. Were Page's departure from his role on the campaign's National Security Working Group and the timing of the application connected in any way?

8. Did the FISA order allow the FBI to obtain emails Page sent prior to the order, during the time he was affiliated with the Trump campaign? If so, were any Obama political appointees able to read internal Trump campaign emails before the election? During the transition period? If so, who, when, and for what purpose?

9. What department standards, rules, regulations, or policies, if any, govern the use of privately or politically funded intelligence gathering as a predicate for a FISA application? Are those standards, rules, regulations, or policies adequate to

[redacted]

(UNCLASSIFIED when separated from attachments)

ensure the ultimate political and financial motivations behind the work are adequately shared and disclosed? Were those standards, rules, regulations, or policies followed in connection with the use of the Steele dossier information in the FISA application for Carter Page or in any other context where the dossier information was relied upon?

10. Do the so-called "Woods Procedures" adequately address how to evaluate potential credibility concerns when using privately or politically funded intelligence in FISA warrant applications?[7]

11. Do the Woods Procedures adequately ensure that unverified and uncorroborated information is not used to obtain FISA warrants targeting American citizens?

12. Did the FBI properly follow the Woods Procedures in obtaining the Page FISA warrant or any of its renewals, including those procedures designed to prevent reliance on unverified or uncorroborated information?

13. How many people at the FBI and the Department of Justice reviewed and approved the Page FISA warrant and renewal applications? Did anyone ever raise any concerns with its accuracy or sufficiency?

14. Did anyone express any concerns about the propriety of presenting unverified, uncorroborated claims from the Steele dossier as the basis for a FISA warrant on an American citizen?

15. Which specific dossier claims presented in the FISA application, if any, had the FBI independently verified at the time they were first presented to the court? Which claims, if any, had been verified by the time each of the renewal applications was filed?

16. Who leaked classified information about the Page FISA warrant to the *Washington Post* while the warrant was active?[8] Why?

17. Chairman Grassley wrote to former Director Comey nearly a year ago requesting him to resolve apparent material discrepancies between information he provided in a closed briefing and information contained in classified documents. Specifically, what Mr. Comey disclosed in a private briefing to the Chairman and Ranking Member Feinstein about the timeline of the FBI's interactions with Mr. Steele appeared inconsistent with information contained in FISA applications the

[7] Memorandum from the Office of the General Counsel, National Security Law Unit, Federal Bureau of Investigation to All Field Offices, *Foreign Intelligence Surveillance Act Procedures to Ensure Accuracy* (Apr. 5, 2001), *available at*: https://fas.org/irp/agency/doj/fisa/woods.pdf.

[8] Ellen Nakashima, Devlin Barrett and Adam Entous, *FBI obtained FISA warrant to monitor Trump adviser Carter Page*, WASHINGTON POST (Apr. 11, 2017).

[redacted]

(UNCLASSIFIED when separated from attachments)

Chairman and Ranking Member later reviewed.[9] No explanation for the inconsistencies has ever been provided. It is unclear whether this was a deliberate attempt to mislead the Oversight Committee about whether the FBI's communications with Mr. Steele about the Trump allegations began before or after the FBI opened the investigation.

What is the reason for the difference between what Mr. Comey told the Chairman and Ranking Member in March 2017, and what appears in the FISA application?[10] Did Director Comey intentionally mislead the Committee? Why did the FBI never respond to Chairman Grassley's questions about the inconsistencies? Did the Chairman's letter first alert the FBI to the inconsistences? Did the FBI seek to correct them in any way? Did anyone block or delay a response to the Chairman on this issue? If so who, and why? Has Mr. Comey provided any other information to congressional committees, Members, or staff, in public testimony or in private briefings, that is inconsistent with the classified documents produced by the FBI in response to congressional inquiries related to the 2016 election?

18. Was Peter Strzok aware of Steele's claims when he opened the so-called Trump/Russia counterintelligence investigation? Did Mr. Steele's claims play any role in the decision to open this investigation, despite the stated basis of foreign intelligence regarding George Papadopoulos? Was there any discussion at the FBI about whether to cite to Steele's information in opening the investigation?

19. To what extent did Mr. Steele's information form any part of the basis for the FBI to expand its investigation from Mr. Papadopoulos to Mr. Page, Lt. Gen. Michael Flynn, and Mr. Manafort?

20. Have Mr. Steele's sources or sub-sources who are described in the dossier, or in any "intelligence reports" compiled by Mr. Steele or his company related to the 2016 election, received any payments directly or indirectly from Mr. Steele, Orbis International, any of Mr. Steele's other sources, or any Russian source?

21. Was anyone in the Justice Department, including senior leadership, aware that Mr. Ohr continued to pass information from Steele and Fusion GPS to the FBI even after Steele was suspended, and terminated, as a source? Who? Were those people aware that Mr. Ohr's wife worked for Fusion? If so, how and when did they become aware?

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[9] Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to James B. Comey, Jr., Director, Federal Bureau of Investigation (Apr. 28, 2017).

[10] The specific inconsistencies are described in the classified attachment.

[redacted]

[redacted]

(UNCLASSIFIED when separated from attachments)

22. Was anyone in the senior leadership of the FBI aware that Mr. Ohr continued to pass information from Steele and Fusion GPS to the FBI after Steele was terminated as a source? Who? Were those people aware that Mr. Ohr's wife worked for Fusion? If so, how and when did they become aware?

23. Did Mr. Ohr ever seek ethics advice from DOJ about his participation in this investigation in light of his wife's employment with Fusion? In light of his becoming a fact witness in a case over which his office (ODAG) likely had supervisory authority? From whom did he seek advice? If so, was he properly advised and to what extent did he follow it?

24. Was it proper for Mr. Ohr to continue to pass information from Steele and Fusion to the FBI after it had suspended, and later terminated, Steele as a source? Why was that fact not disclosed to the FISC? Should it have been? Why was Mr. Ohr's wife's work on behalf of Fusion not disclosed to the FISC?

25. Why did the FBI and the Justice Department fail to disclose Steele's personal bias to the FISC? Specifically, Mr. Ohr informed the FBI that Steele himself was "desperate" to prevent Trump from being elected president. Why was this information withheld from the FISC? Should it have been disclosed in the renewal applications to correct any previous assessments or characterizations about Steele's motivations, as distinct from his client's (Fusion) and funders' (DNC/Clinton campaign)?

26. Who at the Department of Justice or the FBI was aware that Fusion was the subject of a Foreign Agents Registration Act (FARA) complaint alleging that it failed to register as a foreign agent for its work on behalf the Katsyv family to undermine Magnitsky Act sanctions against Russia?[11]

27. Was anyone involved in the decision to use Steele's dossier information in the FISA application aware that Steele's client, Fusion GPS, was accused of being an unregistered foreign agent for Russian interests at the time? Should that information have been shared with those working in the FISA application and disclosed to the FISC at the time? If so, then why wasn't it?

28. Did the FBI provide a defensive briefing to alert then-candidate Trump or any Trump campaign officials to the FBI's counterintelligence concerns about Carter Page, George Papadopoulos, or Paul Manafort? If not, to what extent was such a briefing considered and rejected as a potential way to thwart Russian attempts to

[11] *See, e.g.*, Letter from Chairman Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary and Lindsey O. Graham, Chairman, Subcomm. on Crime and Terrorism, U.S. Sen. Comm. on the Judiciary to Rod J. Rosenstein, Deputy Attorney General, U.S. Dep't of Justice and Andrew McCabe, Acting Director, Federal Bureau of Investigation (June 27, 2017).

[redacted]

interfere with the 2016 election? If it was rejected as an option, why was it rejected and did that decision comply with any standards, rules, or regulations that govern the use of defensive briefings as a counterintelligence tool? Are the existing standards and guidelines for providing defensive briefings adequate to ensure that senior government officials or major party candidates are adequately warned if individuals surrounding them may be targets of foreign intelligence operations? If not, how should those standard and guidelines be improved?

29. In congressional testimony, Mr. Comey claimed that the FBI briefed then President-Elect Trump about the Steele dossier because the FBI had received word that the media was about to report on the dossier.[12] However, subsequent media reporting made clear that the media generally had found the dossier's unverified allegations unreportable, and CNN only broke the story on the dossier because Mr. Comey briefed the President-Elect about it.[13] Thus, there is a question as to whether the FBI included the dossier in the briefing, and possibly leaked that it had done so, in order to provide the media a pretext to report on the dossier.

    This question arises against the backdrop of an apparent broader pattern of FBI leaks about high-profile investigative matters. Text messages recently produced to the Committee by the Department for example show high-level FBI officials apparently communicating with reporters. Those messages also show that the FBI at least considered using the briefing for the purpose of carrying out a counterintelligence assessment of the attendees.

    Did anyone from the FBI or the Department of Justice leak to the media the fact that officials briefed the President-Elect about the contents of the dossier? Did anyone from the FBI or the Department of Justice inform Mr. Steele or anyone associated with Fusion GPS that they briefed the President-Elect about the contents of the dossier? Did the FBI use the briefing to develop a counterintelligence assessment of its attendees?

30. Who leaked to the press the presumably classified contents of the publicly reported call between the Russian ambassador and Michael Flynn?[14] Has anyone been held accountable, and if not, why not?

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[12] Testimony of James B. Comey, Jr., Senate Select Committee on Intelligence (June 8, 2017).

[13] Evan Perez, Jim Sciutto, Jake Tapper, and Carl Bernstein, *Intel chiefs presented Trump with claims of Russian efforts to compromise him*, CNN (Jan. 12, 2017), https://www.cnn.com/2017/01/10/politics/donald-trump-intelligence-report-russia/index.html.

[14] David Ignatius, *Why did Obama dawdle on Russia's hacking?*, WASHINGTON POST (Jan. 12, 2017), https://www.washingtonpost.com/opinions/why-did-obama-dawdle-on-russias-hacking/2017/01/12/75f878a0-d90c-11e6-9a36-1d296534b31e_story.html?utm_term=.81bc5cd1cefa; Andrew McCarthy, *Make the Flynn Tape Public*,

[redacted]

[redacted]

(UNCLASSIFIED when separated from attachments)

31. On January 24, 2017, before Lt. Gen. Flynn resigned as National Security Advisor, he was interviewed by FBI agents about phone calls he had with former Russian Ambassador Sergei Kislyak. On December 1, 2017, Lt. Gen. Flynn pled guilty to lying to them.[15] Recent news reports, however, state that former FBI Director Comey previously told congressional investigators that those agents neither believed that Lt. Gen. Flynn had lied, nor that "any inaccuracies in his answers were intentional."[16]

    Was the interview conducted by the FBI agents on January 24, 2017 part of a criminal investigation or a counterintelligence investigation? Did the FBI agents who interviewed Lt. Gen. Flynn believe that he lied to them or intentionally misled them? Did the FBI agents document their interview with Lt. Gen. Flynn in one or more FD-302s? What were the FBI agents' conclusions about Lt. Gen. Flynn's truthfulness, as reflected in the FD-302s? Were the FD-302s ever edited? If so, by whom? At who's direction? How many drafts were there? Are there material differences between the final draft and the initial draft(s) or the agent's testimony about the interview?

    What information did the FBI present to the DOJ regarding this interview, or any other investigative steps involving Lt. Gen. Flynn, and when? What, if anything, did the DOJ do with this information?

In addition to these questions, please report on the issues raised in the classified attachment and in our classified referral of Christopher Steele.

Thank you for your attention to this matter. If you have any questions please contact Patrick Davis or DeLisa Lay of Chairman Grassley's staff at (202) 224-5225.

Sincerely,

Charles E. Grassley
Chairman
Committee on the Judiciary

Lindsey O. Graham
Chairman
Subcommittee on Crime and Terrorism

NATIONAL REVIEW (Feb. 15, 2017), http://www.nationalreview.com/article/444934/michal-flynn-russia-release-tape-call-russian-ambassador.

[15] Plea Agreement, *U.S. v. Michael T. Flynn*, 1:17-cr-232 (D.D.C. Dec. 1, 2017), https://www.justice.gov/file/1015121/download; Criminal Information, *U.S. v. Michael T. Flynn*, 1:17-cr-232 (Nov. 30, 2017), https://www.justice.gov/file/1015026/download.

[16] Byron York, Comey told Congress FBI agents didn't think Michael Flynn lied, WASHINGTON EXAMINER (Feb. 12, 2018), http://www.washingtonexaminer.com/byron-york-comey-told-congress-fbi-agents-didnt-think-michael-flynn-lied/article/2648896; *see also* Andrew McCarthy, The Curious Michael Flynn Guilty Plea, NATIONAL REVIEW (Feb. 13, 2018), http://www.nationalreview.com/article/456379/michael-flynn-guilty-plea-questions-raised-about-fbi-robert-mueller-investigation.

[redacted]

(UNCLASSIFIED when separated from attachments)

[redacted]

(UNCLASSIFIED when separated from attachments)

cc: The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary

The Honorable Sheldon Whitehouse
Ranking Member
Subcommittee on Crime and Terrorism

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation

The Honorable Richard Burr
Chairman
Senate Select Committee on Intelligence

The Honorable Mark Warner
Vice Chairman
Senate Select Committee on Intelligence

The Honorable Devin Nunes
Chairman
House Permanent Select Committee on Intelligence

The Honorable Adam Schiff
Ranking Member
House Permanent Select Committee on Intelligence

[redacted]

MEMORANDUM

(U) FROM: Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary
Lindsey O. Graham, Chairman, Subcommittee on Crime and Terrorism, U.S. Senate Committee on the Judiciary

TO: The Honorable Rod J. Rosenstein, Deputy Attorney General, U.S. Department of Justice

The Honorable Christopher A. Wray, Director, Federal Bureau of Investigation

RE: Referral of Christopher Steele for Potential Violation of 18 U.S.C. § 1001

(U) As you know, former British Intelligence Officer Christopher Steele was hired by the private firm Fusion GPS in June 2016 to gather information about "links between Russia and [then-presidential candidate] Donald Trump."[1] Pursuant to that business arrangement, Mr. Steele prepared a series of documents styled as intelligence reports, some of which were later compiled into a "dossier" and published by *BuzzFeed* in January 2017.[2] On the face of the dossier, it appears that Mr. Steele gathered much of his information from Russian government sources inside Russia.[3] According to the law firm Perkins Coie, Mr. Steele's dossier-related efforts were funded through Fusion GPS by that law firm on behalf of the Democratic National Committee and the Clinton Campaign.[4]

(U) In response to reporting by the *Washington Post* about Mr. Steele's relationship with the FBI relating to this partisan dossier project, the Judiciary Committee began raising a series of questions to the FBI and the Justice Department about these matters as part of the Committee's constitutional oversight responsibilities.[5]

(U) The FBI has since provided the Committee access to classified documents relevant to the FBI's relationship with Mr. Steele and whether the FBI relied on his dossier work. As explained in greater detail below, when information in those classified documents is evaluated in light of sworn statements by Mr. Steele in British litigation, it appears that either Mr. Steele lied to the FBI or the British court, or that the classified documents reviewed by the Committee contain materially false statements.

[1] (U) Defence, *Gubarev et. Al v. Orbis Business Intelligence Limited and Christobpher Steele*, Claim No. HQ17D00413, Queen's Bench (Apr. 4, 2017), para. 9 [Hereinafter "Steele Statement 1"] [Attachment A].
[2] (U) *Id.* at para. 10; Ken Bensinger, Miriam Elder, and Mark Schoofs, *These Reports Allege Trump Has Deep Ties to Russia*, BUZZFEED (Jan. 10, 2017).
[3] (U) *Id.*
[4] (U) Adam Entous, Devlin Barrett and Rosalind S. Helderman, *Clinton Campaign, DNC Paid for Research that Led to Russia Dossier*, THE WASHINGTON POST (Oct. 24, 2017).
[5] (U) Tom Hamburger and Rosalind S. Helderman, *FBI Once Planned to Pay Former British Spy who Authored Controversial Trump Dossier*, THE WASHINGTON POST (Feb. 28, 2017).

[redacted]

[redacted]

(U) In response to the Committee's inquiries, the Chairman and Ranking Member received a briefing on March 15, 2017, from then-Director James B. Comey, Jr.

[redacted] That briefing addressed the Russia investigation, the FBI's relationship with Mr. Steele, and the FBI's reliance on Mr. Steele's dossier in two applications it filed for surveillance under the Foreign Intelligence Surveillance Act (FISA). Then, on March 17, 2017, the Chairman and Ranking Member were provided copies of the two relevant FISA applications, which requested authority to conduct surveillance of Carter Page. Both relied heavily on Mr. Steele's dossier claims, and both applications were granted by the Foreign Intelligence Surveillance Court (FISC). In December of 2017, the Chairman, Ranking Member, and Subcommittee Chairman Graham were allowed to review a total of four FISA applications relying on the dossier to seek surveillance of Mr. Carter Page, as well as numerous other FBI documents relating to Mr. Steele.

[redacted] In the March 2017 briefing with then-Director Comey, he stated that [redacted]

(U) Similarly, in June 2017, former FBI Director Comey testified publicly before the Senate Select Committee on Intelligence that he had briefed President-Elect Trump on the dossier allegations in January 2017, which Mr. Comey described as "salacious" and "unverified."[6]

[redacted] When asked at the March 2017 briefing why the FBI relied on the dossier in the FISA applications absent meaningful corroboration—and in light of the highly political motives surrounding its creation—then-Director Comey stated that the FBI included the dossier allegations about Carter Page in the FISA applications because Mr. Steele himself was considered reliable due to his past work with the Bureau.

[redacted] Indeed, the documents we have reviewed show that the FBI took important investigative steps largely based on Mr. Steele's information—and relying heavily on his credibility. Specifically, on October 21, 2016, the FBI filed its first warrant application under FISA for Carter Page. This initial application relies in part on alleged past Russian attempts to recruit Page years ago. That portion is less than five pages. The bulk of the application consists of allegations against Page that were disclosed to the FBI by Mr. Steele and are also outlined in the Steele dossier. The application appears to contain no additional information corroborating the dossier allegations against Mr. Page, although it does cite to a news article that appears to be sourced to Mr. Steele's dossier as well.

[6] (U) Statement of James B. Comey, Jr., Hearing of the U.S. Sen. Select Comm. on Intelligence (June 8, 2017).

[redacted]

[redacted]

[redacted] The FBI discussed the reliability of this unverified information provided by Mr. Steele in footnotes 8 and 18 of the FISA warrant application. First, the FBI noted to a vaguely limited extent the political origins of the dossier. In footnote 8 the FBI stated that the dossier information was compiled pursuant to the direction of a law firm who had hired an "identified U.S. person"—now known as Glenn Simpson of Fusion GPS—"to conduct research regarding [Trump's] ties to Russia." The FBI further "speculate[d]" that Mr. Simpson "was likely looking for information that could be used to discredit [Trump's] campaign." The application failed to disclose that the identities of Mr. Simpson's ultimate clients were the Clinton campaign and the DNC.

[redacted] The FBI stated to the FISC that "based on [Steele's] previous reporting history with the FBI, whereby [Steele] provided reliable information to the FBI, the FBI believes [Steele's] reporting to be credible." In short, it appears the FBI relied on admittedly uncorroborated information, funded by and obtained for Secretary Clinton's presidential campaign, in order to conduct surveillance of an associate of the opposing presidential candidate. It did so based on Mr. Steele's personal credibility and presumably having faith in his process of obtaining the information.

(U) But there is substantial evidence suggesting that Mr. Steele materially misled the FBI about a key aspect of his dossier efforts, one which bears on his credibility.

[redacted] In the October 2016 FISA application, and in each of the three renewals, after relaying Steele's dossier allegations against Carter Page, the FBI states: **"[Steele] told the FBI that he/she only provided this information to the business associate [Fusion GPS] and the FBI."**[7] (emphasis added). Indeed, the FISA renewal application in January 2017 notes that Steele had received [redacted]

[redacted] Yet the FISA applications note the existence of a news article dated September 23, 2016, which in particular contained some of the same dossier information about Mr. Page compiled by Mr. Steele and on which the FBI relied in its application. While not explicitly stated, this is presumably the article by Michael Isikoff of *Yahoo News,* titled "U.S. Intel Officials Probe Ties Between Trump Adviser and Kremlin." After noting that Mr. Steele had claimed to the FBI he had only provided this information to the FBI and Mr. Simpson, the application attempts to explain away the inconsistency between Mr. Steele's assertion to the FBI and the existence of the article, apparently to shield Mr. Steele's credibility on which it still relied for the renewal request. The application to the FISC said: "Given that the information contained in the September 23rd news article generally matches the information about Page that [Steele] discovered doing his/her research, [redacted]

[7] [redacted] The FBI has failed to provide the Committee the 1023s documenting all of Mr. Steele's statements to the FBI, so the Committee is relying on the accuracy of the FBI's representation to the FISC regarding those statements.

[redacted]

[redacted]

[redacted] ***The FBI does not believe*** that [Steele] directly provided this information to the press" (emphasis added).

[redacted] In footnote 9 of its January 2017 application to renew the FISA warrant for Mr. Page, the FBI again addressed Mr. Steele's credibility. At that time, the FBI noted that it had suspended its relationship with Mr. Steele in October 2016 because of Steele's "unauthorized disclosure of information to the press." The FBI relayed that Steele had been bothered by the FBI's notification to Congress in October 2016 about the reopening of the Clinton investigation, and as a result "[Steele] independently and against the prior admonishment from the FBI to speak only with the FBI on this matter, released the reporting discussed herein [dossier allegations against Page] to an identified news organization." However, the FBI continued to cite to Mr. Steele's past work as evidence of his reliability, and stated that "the incident that led to the FBI suspending its relationship with [Mr. Steele] occurred after [Mr. Steele] provided" the FBI with the dossier information described in the application. The FBI further asserted in footnote 19 that it did not believe that Steele directly gave information to *Yahoo News* that "published the September 23 News Article."

[redacted] So, as documented in the FISA renewals, the FBI still seemed to believed Mr. Steele's earlier claim that he had only provided the dossier information to the FBI and Fusion—and not to the media—prior to his October media contact that resulted in the FBI suspending the relationship. Accordingly, the FBI still deemed the information he provided prior to the October disclosure to be reliable. After all, the FBI already believed Mr. Steele was reliable, he had previously told the FBI he had not shared the information with the press – and lying to the FBI is a crime. In defending Mr. Steele's credibility to the FISC, the FBI had posited an innocuous explanation for the September 23 article, based on the assumption that Mr. Steele had told the FBI the truth about his press contacts. The FBI then vouched for him twice more, using the same rationale, in subsequent renewal applications filed with the Foreign Intelligence Surveillance Court in April and June 2017.

(U) However, public reports, court filings, and information obtained by the Committee during witness interviews in the course of its ongoing investigation indicate that Mr. Steele not only provided dossier information to the FBI, but also to numerous media organizations **prior to** the end of his relationship with the FBI in October 2016.[8]

(U) In Steele's sworn court filings in litigation in London, he admitted that he "gave off the record briefings to a small number of journalists about the pre-election memoranda [*i.e.*, the dossier] in late summer/autumn 2016."[9] In another sworn filing in that case, Mr. Steele further

[8] (U) *See* Steele Statement 1; Defendants' Response to Claimants' Request for Further Information Pursuant to CPR Part 18, *Gubarev et. Al v. Orbis Business Intelligence Limited and Christopher Steele*, Claim No. HQ17D00413, Queen's Bench (May 18, 2017), [Hereinafter "Steele Statement 2"] [Attachment B]; Tom Hamburger and Rosalind S. Helderman, *FBI Once Planned to Pay Former British Spy who Authored Controversial Trump Dossier*, THE WASHINGTON POST (Feb. 28, 2017); Simpson Transcript, on File with Sen. Comm. on the Judiciary.

[9] (U) Steele Statement 1 at para. 32.

[redacted]

[redacted]

stated that journalists from "the New York Times, the Washington Post, **Yahoo News**, the New Yorker, and CNN" were "briefed **at the end of September 2016** ***by [Steele]*** and Fusion at Fusion's instruction."[10] The filing further states that Mr. Steele "subsequently participated in further meetings at Fusion's instruction with Fusion and the New York Times, the Washington Post, and Yahoo News, which took place mid-October 2016."[11] According to these court filings, "[t]he briefings involved the disclosure of limited intelligence regarding indications of Russian interference in the US election process and the possible co-ordination of members of Trump's campaign team and Russian government officials."[12] In his interview with the Committee, Glenn Simpson of Fusion GPS confirmed this account by Mr. Steele and his company as filed in the British court.[13]

[redacted] The first of these filings was publicly reported in the U.S. media in April of 2017, yet the FBI did not subsequently disclose to the FISC this evidence suggesting that Mr. Steele had lied to the FBI. Instead the application still relied primarily on his credibility prior to the October media incident.

[redacted] The FBI received similar information from a Justice Department official, Bruce Ohr, who maintained contacts with Mr. Simpson and Mr. Steele about their dossier work, and whose wife also worked for Fusion GPS on the Russia project. [redacted] He also noted in the same interview that Mr. Steele was "desperate" to see that Mr. Trump was not elected president.[16] None of the information provided by Mr. Ohr in his interviews with the FBI was included in the FISA renewal applications, despite its relevance to whether Mr. Steele had lied to the FBI about his contacts with the media as well as its broader relevance to his credibility and his stated political motive.

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[10] (U) Steele Statement 2 at para. 18. (emphasis added).

[11] [redacted] *Id.* The filing also apparently described the media contact that resulted in the FBI's suspension of its relationship with Mr. Steele, stating: "In addition, and again at Fusion's instruction, in late October 2016 the Second Defendant briefed a journalist from Mother Jones by Skype."

[12] (U) *Id.*

[13] (U) Simpson Transcript, On File with the Sen. Comm. on the Judiciary at 205-07.

[14] [redacted] Ohr FD-302 (Nov. 22, 2016).

[15] [redacted] Ohr FD-302 (Dec. 12, 2016).

[16] [redacted] Ohr FD-302 (Nov. 22, 2016).

[redacted]

[redacted]

[redacted]Whether Mr. Steele lied to the FBI about his media contacts is relevant for at least two reasons. First, it is relevant to his credibility as a source, particularly given the lack of corroboration for his claims, at least at the time they were included in the FISA applicdations. Second, it is relevant to the reliability of his information-gathering efforts.

(U) Mr. Steele conducted his work for Fusion GPS compiling the "pre-election memoranda" "[b]etween June and early November 2016."[17] In the British litigation, Mr. Steele acknowledged briefing journalists about the dossier memoranda "in late summer/autumn 2016."[18] Unsurprisingly, during the summer of 2016, reports of at least some of the dossier allegations began circulating among reporters and people involved in Russian issues.[19] Mr. Steele also admitted in the British litigation to briefing journalists from the *Washington Post*, *Yahoo News*, the *New Yorker*, and *CNN* in September of 2016.[20] Simply put, the more people who contemporaneously knew that Mr. Steele was compiling his dossier, the more likely it was vulnerable to manipulation. In fact, in the British litigation, which involves a post-election dossier memorandum, Mr. Steele admitted that he received and included in it ***unsolicited***—and unverified—allegations.[21] That filing implies that he similarly received unsolicited intelligence on these matters prior to the election as well, stating that Mr. Steele "***continued to receive unsolicited intelligence*** on the matters covered by the pre-election memoranda after the US Presidential election."[22]

[redacted]

(U) One memorandum by Mr. Steele that was not published by *Buzzfeed* is dated October 19, 2016. The report alleges [redacted], as well as [redacted] Mr. Steele's memorandum states that his company "received this report from [redacted] US State Department," that the report was the second in a series, and that the report was information that came from a foreign sub-source who "is in touch with [redacted], a contact of [redacted], a friend of the Clintons, who passed it to [redacted]." It is troubling enough that the Clinton Campaign funded Mr. Steele's work, but that these Clinton associates were contemporaneously feeding Mr. Steele allegations raises additional concerns about his credibility.

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[17] (U) Steele Statement 1 at para. 9.

[18] (U) Steele Statement 1 at para. 32

[19] (U) Ahkmetshin Transcript, On File with the Sen. Comm. on the Judiciary (Mr. Ahkmetshin informed the Committee that he began hearing from journalists about the dossier before it was published, and thought it was the summer of 2016).

[20] (U) Steele Statement 2 at para. 18 (emphasis added).

[21] (U) Steele Statement 1 at para. 18 and 20c.

[22] (U) *Id.*; *see* Steele Statement 2 at 4 ("Such intelligence was not actively sought, it was merely received.")

[redacted]

[redacted]

[redacted] Simply put, Mr. Steele told the FBI he had not shared the Carter Page dossier information beyond his client and the FBI. The Department repeated that claim to the FISC. Yet Mr. Steele acknowledged in sworn filings that he did brief *Yahoo News* and other media organizations about the dossier around the time of the publication of the *Yahoo News* article that seems to be based on the dossier.

(U) On September 23, 2016, *Yahoo News* published its article entitled "U.S. Intel Officials Probe Ties Between Trump Adviser and Kremlin."[23] That article described claims about meetings between Carter Page and Russians, including Igor Sechin. Mr. Sechin is described in the article as "a longtime Putin associate and former Russian deputy prime minister" under sanction by the Treasury Department in response to Russia's actions in the Ukraine.[24] The article attributes the information to "a well-placed Western intelligence source," who reportedly said that "[a]t their alleged meeting, Sechin raised the issue of the lifting of sanctions with Page."[25] This information also appears in multiple "memoranda" that make up the dossier.[26]

(U) In sum, around the same time *Yahoo News* published its article containing dossier information about Carter Page, ***Mr. Steele and*** Fusion GPS had briefed *Yahoo News* and other news outlets about information contained in the dossier.

[redacted] These facts appear to directly contradict the FBI's assertions in its initial application for the Page FISA warrant, as well as subsequent renewal applications. The FBI repeatedly represented to the court that Mr. Steele told the FBI he did ***not*** have unauthorized contacts with the press about the dossier prior to October 2016. The FISA applications make these claims specifically in the context of the September 2016 *Yahoo News* article. But Mr. Steele has admitted—publicly before a court of law—that he ***did*** have such contacts with the press at this time, and his former business partner Mr. Simpson has confirmed it to the Committee. Thus, the FISA applications are either materially false in claiming that Mr. Steele said he did not provide dossier information to the press prior to October 2016, or Mr. Steele made materially false statements to the FBI when he claimed he only provided the dossier information to his business partner and the FBI.

[redacted] In this case, Mr. Steele's apparent deception seems to have posed significant, material consequences on the FBI's investigative decisions and representations to the court. Mr. Steele's information formed a significant portion of the FBI's warrant application, and the FISA application relied more heavily on Steele's credibility than on any independent verification or corroboration for his claims. Thus the basis for the warrant authorizing surveillance on a U.S. citizen rests largely on Mr. Steele's credibility. The Department of Justice has a responsibility to

[23] (U) Michael Isikoff, *U.S. Intel Officials Probe Ties Between Trump Adviser and Kremlin*, YAHOO NEWS (Sept. 23, 2016).
[24] (U) *Id.*
[25] (U) *Id.*
[26] (U) Bensinger *et. al*, BUZZFEED.

[redacted]

[redacted]

determine whether Mr. Steele provided false information to the FBI and whether the FBI's representations to the court were in error.

(U) Accordingly, we are referring Christopher Steele to the Department of Justice for investigation of potential violation(s) of 18 U.S.C. § 1001.

[redacted]

EXHIBIT 5

Exhibit A

December 30, 2003 Letter
from Deputy Attorney General James B. Comey
to Patrick J. Fitzgerald

Office of the Deputy Attorney General
Washington, D.C. 20530

December 30, 2003

The Honorable Patrick J. Fitzgerald
United States Attorney
219 S. Dearborn Street
Chicago, IL 60604

Dear Patrick,

By the authority vested in the Attorney General by law, including 28 U. S .C. §§ 509, 510, and 515, and in my capacity as Acting Attorney General pursuant to 28 U.S.C. § 508, I hereby delegate to you all the authority of the Attorney General with respect to the Department's investigation into the alleged unauthorized disclosure of a CIA employee's identity, and I direct you to exercise that authority as Special Counsel independent of the supervision or control of any officer of the Department.

/s/ James B. Comey
James B. Comey
Acting Attorney General

Exhibit B

February 6, 2004 Letter
from Deputy Attorney General James B. Comey
to Patrick J. Fitzgerald

Office of the Deputy Attorney General
Washington, D.C. 20530

February 6, 2004

The Honorable Patrick J. Fitzgerald
United States Attorney
Northern District of Illinois
219 S. Dearborn Street
Chicago, Illinois 60604

Dear Patrick:

At your request, I am writing to clarify that my December 30, 2003, delegation to you of "all the authority of the Attorney General with respect to the Department's investigation into the alleged unauthorized disclosure of a CIA employee's identity" is plenary and includes the authority to investigate and prosecute violations of any federal criminal laws related to the underlying alleged unauthorized disclosure, as well as federal crimes committed in the course of, and with intent to interfere with, your investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses; to conduct appeals arising out of the matter being investigated and/or prosecuted; and to pursue administrative remedies and civil sanctions (such as civil contempt) that are within the Attorney General's authority to impose or pursue. Further, my conferral on you of the title of "Special Counsel" in this matter should not be misunderstood to suggest that your position and authorities are defined and limited by 28 CFR Part 600.

Sincerely,

/s/ James B. Comey
James B. Comey
Acting Attorney General

Exhibit C

August 12, 2005 Letter
from Deputy Attorney General James B. Comey
to Associate Deputy Attorney General David
Margolis

U. S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

MEMORANDUM

TO: David Margolis
Associate Deputy Attorney General

FROM: James B. Comey
Deputy Attorney General

SUBJECT: Delegation of Authority

In the attached correspondence to Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, dated December 30, 2003, and Feburary 6, 2004, I delegated to Mr. Fitzgerald all of the authority of the Attorney General with respect to the Department's investigation into the alleged unauthorized disclosure of a Central Intelligence Agency employee's identity. By virtue of the authority vested in me as Deputy Attorney General under the law, including 28 C.F.R. § 0.15(a), I delegate to you all of my authority as Acting Attorney General with respect to that investigation and Mr. Fitzgerald's service as Special Counsel, as delineated in that correspondence. This delegation to you in no way retracts or modifies the scope of the prior delegations of authority to Mr. Fitzgerald.

August 12, 2005
Date

/s/ James B. Comey
James B. Comey

Attachments (2)

cc: Robert D. McCallum, Jr.
Patrick J. Fitzgerald

Exhibit D

Department of Justice Press Conference
Deputy Attorney General James Comey
December 30, 2003

Department of Justice

DEPARTMENT OF JUSTICE PRESS CONFERENCE
WASHINGTON, D.C.

APPOINTMENT OF SPECIAL PROSECUTOR TO OVERSEE INVESTIGATION INTO ALLEGED LEAK OF CIA AGENT IDENTITY AND RECUSAL OF ATTORNEY GENERAL ASHCROFT FROM THE INVESTIGATION

DEPUTY ATTORNEY GENERAL JAMES COMEY
ASSISTANT ATTORNEY GENERAL CHRISTOPHER RAY
DECEMBER 30, 2003

MR. COMEY: Good afternoon, folks. I'm joined behind the podium by Assistant Attorney General Christopher Ray. We are here to announce a couple of procedural developments in the investigation into allegations that the identity of a CIA employee was improperly disclosed to the media last July.

The first development is that effective today, the attorney general has recused himself and his office staff from further involvement in this matter. By that act, I automatically become the acting attorney general for purposes of this case with authority to determine how the case is investigated, and if warranted by the evidence, prosecuted.

The attorney general, in an abundance of caution, believed that his recusal was appropriate based on the totality of the circumstances and the facts and evidence developed at this stage of the investigation. I agree with that judgment. And I also agree that he made it at the appropriate time, the appropriate point in this investigation.

The second development is that prior to his recusal, the attorney general and I agreed that it was appropriate to appoint a special counsel [read: special prosecutor] from outside our normal chain of command to oversee this investigation.

By his recusal, of course, the attorney general left to me the decision about how to choose a counsel, who that person should be and what that person's mandate should be. In anticipation of this development, I have given a great deal of thought to this in recent days and have decided that, effective immediately, the United States attorney for the Northern

District of Illinois, Patrick J. Fitzgerald, will serve as special counsel in charge of this matter. I chose Mr. Fitzgerald, my friend and former colleague, based on his sterling reputation for integrity and impartiality. He is an absolutely apolitical career prosecutor. He is a man with extensive experience in national security and intelligence matters, extensive experience conducting sensitive investigations, and in particular, experience in conducting investigations of alleged government misconduct.

I have today delegated to Mr. Fitzgerald all the approval authorities that will be necessary to ensure that he has the tools to conduct a completely independent investigation; that is, that he has the power and authority to make whatever prosecutive judgments he believes are appropriate, without having to come back to me or anybody else at the Justice Department for approvals. Mr. Fitzgerald alone will decide how to staff this matter, how to continue the investigation and what prosecutive decisions to make. I expect that he will only consult with me or with Assistant Attorney General Ray, should he need additional resources or support

You should know that as I thought about this matter in recent days, I considered other alternatives. I first considered having the matter handled by Assistant Attorney General Ray and myself acting as ultimate supervisors and decision-makers.

You will not be surprised to learn that I have great confidence in my own ability to be fair and impartial. I also have complete confidence in Chris Ray's ability to be fair and impartial. He is -- those of you who don't know him, he is a total pro and one of the people who makes this department great.

But as I said, both the attorney general and I thought it prudent -- and maybe we are being overly cautious, but we thought it prudent to have the matter handled by someone who is not in regular contact with the agencies and entities affected by this investigation. As part of our counterterrorism responsibilities, Assistant Attorney General Ray and I work every single day with the national security intelligence community here in Washington. Mr. Fitzgerald, in Chicago, does not.

At a time when fighting terrorism is the department's top priority, as it should be, it is imperative that Mr. Ray and I be able to focus on that responsibility without the complication that would come from also having to make decisions about this investigation.

Let me add that my decision to assign this matter to the United States attorney from Chicago is not a reflection on the people who have conducted this investigation to date or the way they have done it. We have a fabulous team of FBI agents working this case, coordinating with some of our very best career lawyers. I now know in great detail the work that they have done very quickly in this investigation, and it is impressive.

I should add that Mr. Fitzgerald may well decide to keep some or all of the career team that has been working this case, but that's entirely his call.

I also considered naming a special counsel from outside the government.

The regulations promulgated in 1999 by Attorney General Reno say that an outside special counsel should -- and I'm going to read you the quote -- "be a lawyer with a reputation for integrity and impartial decision-making, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously and thoroughly and that

investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department of Justice policies."

When I read that, I realized that it describes Pat Fitzgerald perfectly. I once told a Chicago newspaper that Pat Fitzgerald was Eliot Ness with a Harvard law degree and a sense of humor. Anyone who knows him, who knows his work, who knows his background, knows that he is the perfect man for this job.

The attorney general and I agree that all leak investigations must be conducted with energy and urgency. That is all the more true when the investigation centers on allegations that there has been a disclosure of national security information. To date this investigation has been conducted professionally and expeditiously, and I believe it would not be in the public interest for anything I do to cause this investigation to be put on hold for any period of time.

My choice of Pat Fitzgerald, a sitting United States attorney, permits this investigation to move forward immediately and to avoid the delay that would come from selecting, clearing and staffing an outside special counsel operation. In addition, in many ways the mandate that I am giving to Mr. Fitzgerald is significantly broader than that that would go to an outside special counsel.

In short, I have concluded that it is not in the public interest to remove this matter entirely from the Department of Justice, but that certain steps are appropriate to ensure that the matter is handled properly and that the public has confidence in the way in which it is handled. I believe the assignment to Mr. Fitzgerald achieves both of those important objectives.

Now I'd be happy to take any questions you might have.

Yes, sir?

Q: What happened? I mean, you guys were defending the professional staff here at the Justice Department to handle it, and now all the sudden you're appointing Mr. Fitzgerald. What happened to tip it?

MR. COMEY: Well, I think what the Department of Justice has said to date is that all options were open; that it was being handled professionally by the career lawyers and FBI agents on the matter. And that's absolutely true. I know the details of this investigation. I've been down in the weeds and looked at the work they've done, and it's exactly what you were told it was: career prosecutors working very, very hard on it.

It's just that we reached a point in the investigation where the attorney general and I thought it was appropriate to make the judgment that's been made.

Q: Well what's different? Why did you decide now to send it to Fitzgerald if everything was going so well?

MR. COMEY: Well, I can't tell you that, and the reason for that is obvious; I can't tell you about the details of any criminal investigation because our goal is to make sure that anyone we're pursuing doesn't know what we're doing, and also, anyone who might not be charged with a crime is not unfairly smeared.

What happened is that the attorney general and I have periodically looked at these facts that have been developed and made a judgment, based on the totality of the circumstances, as to whether he should remain involved in it, and if he's to be out of it, what I should do with it. And so I just decided that based on what I knew about it, it was appropriate, for the reasons I said, for the attorney general to step aside -- a conclusion he reached on his own -- and for me to assign it to an independent United States Attorney.

Yes, sir?

Q: Even without names, was there some conflict, particular conflict that arose?

MR. COMEY: Well, the issue surrounding the attorney general's recusal is not one of actual conflict of interest that arises normally when someone has a financial interest or something. The issue that he was concerned about was one of appearance. And I can't go beyond that. That's the reason he decided, really in an abundance of caution, that he ought to step aside and leave me as acting attorney general for those matters.

Yes, sir?

Q: You mentioned the facts and the evidence that's been developed and how that played a role in this decision. Should this be seen as a sign that the evidence has taken you closer to people that Mr. Ashcroft has a connection with and that could create at least the appearance of a conflict? Has the evidence led you in that direction?

MR. COMEY: I can't answer that, Eric. And I know it's inevitable that you're going to speculate. I really hope you don't do that because as I said, the attorney general made this judgment based on the totality picture, looking at all the circumstances and facts and evidence in the case. If you were to speculate in print or in media about particular people, I think that would be unfair to them. The reason, as you know, that we work so hard -- I've done this for a long time -- to keep these investigations secret is so that we don't do that to people.

What I can tell you is that the investigation has been moving along very, very quickly; has been worked very, very hard and very, very well, and it reached a point where we simply thought these judgments were appropriate.

Yes, sir?

Q: Jim, but you did say, when you were asked why now, that you can't tell us that, you can't talk about the details of any criminal investigation. Is it at least safe to say that it's the details at this point that tipped the balance? Is that accurate?

MR. COMEY: It's fair to say that an accumulation of facts throughout the course of the investigation over the last several months has led us to this point. What those facts are and where they tell us we're going is stuff I can't get into and that I would hope you would not speculate about.

Yes, sir?

Q: Without getting in the details of people, can you describe sort of the scope of the

investigation in terms of how many agents are working on it? I guess there's another prosecutor that's been added recently. How many agents, how many prosecutors, and how many people have been interviewed?

MR. COMEY: That's the kind of detail -- exactly the kind of detail I can't get into. All I can tell you is that based on my inspection of it, it's been worked well, it's been worked appropriately, it's been staffed appropriately. But beyond that, I can't say.

Yes, ma'am?

Q: Do you have any sort of timeline about when you think this investigation will be over?

MR. COMEY: I do not. That will be Mr. Fitzgerald's call. He'll be in charge of the matter and he'll make that judgment.

Q: How will this work from a procedural standpoint? Mr. Fitzgerald clearly is in Chicago, over 500 miles away. How will he lead an investigation that (normally ?) takes place here in Washington?

MR. COMEY: Well, there are -- I think hourly -- flights, maybe very half-hour, to Chicago. And he'll get to know those folks.

Q: (Off mike) -- from Chicago? I mean, how will this work?

MR. COMEY: That's his --

Q: How will he juggle it with his duties based in Illinois?

MR. COMEY: Well, that's a call he'll have to make. He understands the priority here. I told him that my mandate to him was very simple: Follow the facts wherever they lead, and do the right thing at all times. And that's something, if you know this guy, is not something I even needed to tell him.

Yes, ma'am?

Q: Can you clarify the timeline a little bit? You said Ashcroft made the decision to recuse himself and informed you of it. Can you tell us when that decision was made, when he told you? You said you've been thinking for a couple days on how to proceed. Can you tell us about that timeline?

MR. COMEY: Well, this has come together really in the last week. The attorney general entered -- I don't know whether it was entered an order, but a document was created this morning that memorialized the recusal. It has to be done kind of officially. Once that was done, I officially became assistant -- excuse me, acting attorney general for the purpose of this case, and then was in a position to do what I've described. But because we've been discussing this matter and had sort of reached this conclusion over the last week, I had plenty of time to think about what I wanted to do with it.

Q: Is this a suggestion that you brought to him first?

MR. COMEY: I don't want to talk about my discussions with the attorney general. What I can tell you is that it was always in his mind that it might be necessary at some point for him to step away from this, step aside from this, and that it might be necessary to change the way it was approached, to move it outside the normal chain of command.

I can't -- and for that reason -- that was the reason -- much was made in the press, apparently, that he was learning about the facts of it. He was being briefed periodically on the facts, so that he could make the very judgment he made here. And I can tell you none of that acted to delay this investigation in any way. The attorney general learned enough about the case that at a point where it was appropriate, he made the judgment to step aside.

And I, at the same time, was making my own judgments, and that is agreeing with him that it was appropriate for him to step aside, but also reaching the conclusion that it was appropriate to change the way we were handling this, for the reasons I talked about in my statement.

And as I said, I have great confidence in the two guys standing on this stage. And -- but my judgment was, simply because of the subject matter involved here and our duties -- which most people don't realize, but we spend part of every day working on national security intelligence stuff -- that it was better for us to be able to focus on that, which is our nation's number-one priority, and not, at the same time, be making judgments about who to interview and all the things that come with an investigation.

Yes, sir?

Q: Pat Fitzgerald works a lot with national security and intelligence issues as well, however, does he not? I mean, he's running one of the largest U.S. attorney's offices in the country. He's overseen some major prosecutions. Where's the line between the contact you two have versus the kind of contact that he -- he's also fairly well-known, I think, for his work in national security.

MR. COMEY: He is, but his -- not to say what he's doing now is not real important, but his role is very, very different. I mean, every day Chris Ray and I are dealing with the key national security intelligence agencies. Mr. Fitzgerald is not. He may have a case that occasionally brings him into contact with that, but he's running a U.S. attorney's office, working on corruption cases, drug cases, gang cases. It's a very different sort of connection. And so that's why I thought this was appropriate.

Yes, sir?

Q: Will this office be an independent office that's set up someplace outside of Justice and the FBI, where most of the people may be drawn from? (Off mike) -- special prosecutor's office.

MR. COMEY: I don't know where it'll be housed. Wherever Mr. Fitzgerald wants to house it, we'll make sure we get him the space that he wants. That's not a matter I've discussed with him.

Q: You mentioned that the attorney general's office -- the staff in his office itself are also

being recused. Why was that decision made? And who and how many people are included in that recusal?

MR. COMEY: I don't know how many people. The entire -- "personal staff" is not what they call it, but the entire staff of the office of the attorney general would be recused. And that, I believe, is fairly standard fare, because they are -- just as my staff, whether they like it or not, is an extension of me, his staff is an extension of him, and they're of a piece.

There was a question --

Q: Attorney General Reno said several years ago -- and I think many of us quoted this when all this came up -- that many of the investigations -- leak investigations are closed without a suspect ever being identified. Can you tell us if a suspect or suspects, in your term of art, has been identified in this case, or do you -- are you confident that that is likely to happen in this case?

MR. COMEY: I can't do that. Just -- and it's not this particular investigation. I would never say that kind of details on any pending criminal investigation. I just can't do it, for the reasons I said. We don't want people that we might be interested in to know we're interested in them. We also don't want to smear somebody who might be innocent and might not be charged. That's why the secrecy of our process, I think, is what makes our process great.

STAFF: A question here. Sir?

Q: Does the attorney general still have the authority to fire the U.S. attorney?

MR. COMEY: No. I don't think the attorney general ever has the authority to fire a U.S. attorney. It's one of the things I loved about being a U.S. attorney. I believe the president is the only person who has authority to remove a United States attorney.

In this circumstance, because the attorney general is recused, I am the acting attorney general, for purposes of this matter. So to the --

Q: Could you fire Fitzgerald?

MR. COMEY: That's a great question. (Laughter.) Now I believe that I could revoke the delegation of authority that I've given to him. I don't believe that I could --

Q: So how does that move it outside the traditional chain of command, as you put it?

MR. COMEY: Well, because what I've done with Fitzgerald is -- the normal outside counsel, appointed outside, or the ordinary U.S. attorney, if he needs to issue a subpoena involving the media, for example, or if he wants to grant immunity to somebody or if he wants to take an appeal, has to come for approval to the Department of Justice. Pat Fitzgerald will not, for these purposes.

He is a --

Q: If you don't like what he's doing, you can end it.

MR. COMEY: Well, in theory, if I know what he's doing, in theory I could, yeah. And I'd better have a darn good reason for doing it, because you'd have your hands in the air.

Yes, sir?

Q: I wanted to ask you an unrelated question about the Code Orange and the terrorism alert. As we go into the New Year's Eve, can you discuss at all what the current status is, whether you think threats are diminishing or staying the same or getting more intense? And also if you can comment at all about the flights from Paris, the Air France flights, and what seems to be a disconnect between the French, saying that there doesn't appear to be that much of a problem, and people here saying that they do believe there was a threat on that flight?

MR. COMEY: Okay. All of those questions really are best addressed to Homeland security. What I can tell you is I think what Secretary Ridge has already said, and that is that we are in a period of heightened concern, and as he said, I think, that extends into January. Folks shouldn't think that if the New Year's Eve passes, that we're out of the woods with regard to the heightened alert. So that remains.

With respect to the Air France flight, that's really not something I could comment on.

Yes, sir?

Q: How was the White House informed about this decision?

MR. COMEY: I contacted each of the general counsels of the agencies that had been affected in some way or contacted as part of this investigation. That is, I called Defense, State, CIA and White House Counsel's Office to simply inform them that there was going to be a change in the prosecutor in charge of this matter, I would announce it at 2:00. I did that in the last several hours.

Q: But there was no separate consultation with the White House?

MR. COMEY: No. No. All I did was just inform them, as I did, as I said, State, Defense, CIA: I just want to tell you, here's what I'm announcing at 2:00.

Q: And the attorney general didn't consult with them or inform them personally of his decision?

MR. COMEY: I can't speak to -- I don't believe so. I can't speak to that. I don't think there was any consultation of the attorney general with those agencies.

Yes, sir?

Q: You mentioned that the -- you felt that Fitzgerald will have a broader -- actually a broader mandate, broader abilities than an outside counsel. Can you expand on that a little bit? In what respect will he have a --

MR. COMEY: Yes. An outside counsel has a -- the regulations prescribe a number of ways in which they're very similar to a U.S. attorney. For example, they have to follow all Department of Justice policies regarding approvals. So that means if they want to subpoena

a member of the media, if they want to grant immunity, if they want to subpoena a lawyer -- all the things that we as U.S. attorneys have to get approval for, an outside counsel has to come back to the Department of Justice. An outside counsel also only gets the jurisdiction that is assigned to him and no other. The regulations provide that if he or she wants to expand that jurisdiction, they have to come back to the attorney general and get permission.

Fitzgerald has been told, as I said to you: Follow the facts; do the right thing. He can pursue it wherever he wants to pursue it.

An outside counsel, according to the regulations, has to alert the attorney general to any significant event in the case; file what's called an "urgent report." And what that means is just as U.S. attorneys have to do that, he would have to tell the attorney general before he brought charges against anybody, before maybe a significant media event, things like that. Fitzgerald does not have to do that; he does not have to come back to me for anything. I mean, he can if he wants to, but I've told him, our instructions are: You have this authority; I've delegated to you all the approval authority that I as attorney general have. You can exercise it as you see fit.

And a U.S. attorney or a normal outside counsel would have to go through the approval process to get permission to appeal something. Fitzgerald would not because of the broad grant of authority I've given him.

So, in short, I have essentially given him -- not essentially -- I have given him all the approval authorities that rest -- that are inherent in the attorney general; something that does not happen with an outside special counsel.

Q: I assume this is written down somewhere, and are we going to get a copy of it?

MR. COMEY: I don't know whether you'll get a copy, but he will.

Q: Getting back to orange alert for a second, what are DOJ's responsibilities in an orange alert situation? I mean, we know what TSA does, DHS. What does the Justice Department do?

And also, do you plan to file any kind of response on the Padilla case? (Off mike) -- halfway through the 30 days.

MR. COMEY: With respect to the orange alert, the Justice Department's role in general, obviously, is before the alert level is raised, the attorney general is part of any deliberations about raising that.

More generally, I hope you know what we do, and that is the men and women of the FBI and all of our agencies are out there working like crazy to try and keep the homeland safe. I can't answer it other than -- as broadly as that. A lot of people's holidays have not been holidays because of the effort they've been putting forth, and I hope people remember that.

With respect to Padilla, I can't comment. I know we still have time on the clock, but I don't know exactly where it stands.

Eric?

Q: President Bush said, soon after the leak story broke, that he wasn't sure that the leaker would ever be caught. I know you can't talk about specific suspects that you may be narrowing in on, but in general, are you confident that this case is going to result in a prosecution?

MR. COMEY: That's not a characterization I can make. I wouldn't do it about any case, but I'm not going to do it about this case. All I can tell you is that I'm confident that the facts will be found professionally and that the judgments will be made by someone with impeccable judgment and impartiality, and that is Mr. Fitzgerald.

Yes, ma'am?

Q: Have you set a budget for Mr. Fitzgerald's office? And -- well, that's it.

MR. COMEY: The answer is no.

Mr. Fitzgerald's office has a budget, which he no doubt -- as U.S. attorney -- no doubt thinks is too small. And that's what I meant when I said resources. If he needs people or money or chairs or sticky pads, he can come back to me or to Assistant Attorney General Ray and we'll make sure that he gets it. I would expect that because he's already in the Department of Justice, we already have a team in place, he'll at least be able to draw on some, maybe all, of those resources and supplement them. He happens to run one of the best U.S. attorney's offices in the country, and he has senior people with great experience in a host of issues that might be relevant. So I would expect he'd draw on those troops.

Q: So there won't be a separate budget for this independent investigation?

MR. COMEY: No.

Yes, ma'am?

Q: He's just building on what Mr. Dionne (sp) has already completed; is that correct? And what happens to Mr. Dionne (sp)? Will he work for MR. Fitzgerald? Will he continue to play an important role in this investigation since he's conducted the majority of the investigation to this point?

MR. COMEY: Well, that's a judgment for Mr. Fitzgerald to make as to what he builds on, what he does. I'm sure he knows of Mr. Dionne's (sp) reputation just as I do. But again, I don't want to prejudge that. It's entirely his call as to how he staffs it. Like I said, I wouldn't be surprised if he thought maybe he ought to keep some or all of the career folks involved.

I know that one of the things that makes Mr. Fitzgerald a great prosecutor is that he works quickly. He understands that justice delayed is not a good thing. So I would expect -- and that's one of the things that made me prefer this over an outside option. Mr. Fitzgerald can be here -- (snaps his fingers) -- like that to pick up this ball and to run with it, which would not be possible with the alternative.

Q: (Off mike) -- bring people from Chicago -- (off mike) -- to Washington?

MR. COMEY: The answer to that is I don't know. And I really would not presume to tell

him that. I'm giving him a broad mandate and saying this is your charge.

Yes, sir?

Q: A quick question. Eric asked if you were confident that you could -- that you might be able to prosecute the leaker. That's a pretty high standard of proof. Are you confident that you will be able to identify the leaker or leakers?

MR. COMEY: Same answer I gave Eric, which I hope was vague and noncommittal.

Thank you, folks.

(end transcript)

EXHIBIT 6

Large File Of Evidence Is Available In Leak Case

By DAVID JOHNSTON JAN. 1, 2004

The special prosecutor appointed to lead the inquiry into who divulged the name of an undercover C.I.A. officer will be given access to a substantial investigative file compiled over the last three months. The file contains more than 30 interviews of Bush administration officials and a body of White House documents that investigators said could help crack the case.

The prosecutor, Patrick J. Fitzgerald, the United States attorney in Chicago who was named on Tuesday to take over the case, will be armed with a full range of prosecutorial powers, including the authority to convene a grand jury to obtain sworn testimony from officials suspected of having knowledge of the matter.

With the interviews, documents and grand jury tools, law enforcement officials said on Wednesday that they are increasingly optimistic that Mr. Fitzgerald stands a strong chance of getting to the bottom of whether anyone in the administration improperly identified a C.I.A. officer to a newspaper columnist.

But despite the resurgent mood surrounding the case, investigators are said to doubt, at least for the moment, that anyone is likely to be prosecuted for disclosure of the identity of the officer even though the unauthorized disclosure of an undercover operative is a federal crime. That is because a prosecutor must show that a defendant knew that it was unlawful to disclose the name.

White House officials have denied that senior aides to President Bush disclosed the identity of the C.I.A. officer, Valerie Plame, to Robert Novak, who wrote in his syndicated column last July that Ms. Plame, the wife of

former Ambassador Joseph C. Wilson IV, was a C.I.A. employee. Mr. Wilson was a critic of the administration's Iraq policies.

Specifically, the White House has denied that Karl Rove, the president's chief political adviser, had any role in leaking the information to Mr. Novak. Mr. Rove is among the officials interviewed by F.B.I. agents, but so far none of them have been questioned under oath, officials said.

Investigators instructed the White House, the C.I.A., the Defense Department and the State Department not to destroy any records that could be considered relevant to the inquiry. But the White House is the only agency at which investigators are known to have demanded that officials actually turn over records.

The White House has turned over a number of documents, officials said, including notes of White House meetings, calendars, phone records and datebooks that officials have said provided telling clues about who within the administration may have had access to Ms. Plame's identity.

While some details of the evidence in the case are known, the overall status of the investigation has been difficult to gauge independently. It is not known, for example, whether the inquiry has focused on any single suspect.

The Justice Department and the F.B.I. have dropped an unusually heavy veil of secrecy over the leak investigation, at Attorney General John Ashcroft's insistence. Lawyers and agents have been required to sign nondisclosure agreements, and Robert S. Mueller III, the F.B.I. director, assigned the case to an F.B.I. headquarters unit under close supervision of senior bureau officials.

Justice Department officials cautioned against reading too much into the appointment of Mr. Fitzgerald. One department official said that the appointment did not indicate that the inquiry had compiled a critical mass of evidence that had forced Mr. Ashcroft's decision to step aside as the senior

official in charge. Mr. Ashcroft's aides have said that the attorney general has been prepared all along to recuse himself to avoid even the appearance of a political conflict of interest.

Even so, attorneys general rarely voluntarily cede authority over big cases. And Mr. Ashcroft has maintained tight control during three months of increasingly harsh criticism from Democrats in the Senate who complained that he could not credibly lead an investigation that focused on the White House and on old friends like Mr. Rove, a former adviser to Mr. Ashcroft.

Associates of Mr. Fitzgerald said it seemed unlikely that he would have accepted the appointment if the investigation was likely to wind up as a dead-end case. Mr. Fitzgerald is highly respected among career prosecutors and longtime F.B.I. agents as one of the toughest legal adversaries in the Justice Department. One associate said, ''I'm sure the word is going out that the bulldog has arrived in town.''

EXHIBIT 7

Department of Justice

FOR IMMEDIATE RELEASE
Monday, September 29, 2008
WWW.USDOJ.GOV

OPA
(202) 514-2007
TDD (202) 514-1888

Statement by Attorney General Michael B. Mukasey on the Report of an Investigation into the Removal of Nine U.S. Attorneys in 2006

"I commend the hard work and collaboration of the Justice Department's Offices of Inspector General and Professional Responsibility on today's report concerning the removal of nine U.S. Attorneys in 2006.

"The Offices of the Inspector General and Professional Responsibility dispelled many of the most disturbing allegations made in the wake of the removals. However, the Report makes plain that, at a minimum, the process by which nine U.S. Attorneys were removed in 2006 was haphazard, arbitrary and unprofessional, and that the way in which the Justice Department handled those removals and the resulting public controversy was profoundly lacking. It is true, as the report acknowledges, that an Administration is entitled to remove presidential appointees, including U.S. Attorneys, for virtually any reason or no reason at all. But the leaders of the Department owed it to those who served the country in those capacities to treat their careers and reputations with appropriate care and dignity. And the leaders of the Department owed it to the American people they served to conduct the public's business in a deliberate and professional manner. The Department failed on both scores.

"Today's report is an important step toward acknowledging what happened, and holding the responsible officials to proper account. I hope the report provides a measure of relief to those U.S. Attorneys whose reputations were unfairly tainted by the removals and their aftermath. They did not deserve the treatment they received.

"The Report leaves some important questions unanswered and recommends that I appoint an attorney to assess the facts uncovered, to conduct further investigation as needed, and ultimately to determine whether any prosecutable offense was committed with regard to the removal of a U.S. Attorney or the testimony of any witness related to the U.S. Attorney removals. In the normal course, a report recommending further investigation would not be released until after the investigation and any resulting prosecution had been completed, for fear that disclosing publicly relevant facts and witness statements would hinder the investigation or prosecution. In this instance, the Offices of Inspector General and Professional Responsibility have made the judgment that the circumstances warrant a departure from this usual practice.

"The Justice Department has an obligation to the American people to pursue this case wherever the facts and the law require. This investigation would ordinarily be conducted under the supervision of either the United States Attorney for the District of Columbia or a Department component. However, the United States Attorney's Office for the District of Columbia has been recused from the matter, and I have determined that, given the nature of the matter, it would be best overseen by an attorney outside Main Justice.

"Therefore, I have asked Nora Dannehy to exercise the authority of the United States Attorney for the District of Columbia for purposes of this matter. In that capacity, Ms. Dannehy will report to me through the Deputy Attorney General. Ms. Dannehy is a well-respected and experienced career prosecutor who has conducted or supervised a wide range of investigations and prosecutions during her lengthy career, and I am grateful to her for her willingness to serve in this capacity.

"This Report describes a disappointing episode in the history of the Department. What should not be lost in this are the efforts of the dedicated and hard-working employees of the Justice Department who are focused on

what they do best, which is protecting our country and faithfully enforcing our laws."

A biography of Acting U.S. Attorney Nora R. Dannehy may be viewed at http://www.usdoj.gov/usao/ct/usattorney.html.

Report of an Investigation into the Removal of Nine U.S. Attorneys in 2006

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08-859

EXHIBIT 8

Special Prosecutor Named in Attorney Firings Case

By ERIC LICHTBLAU and SHARON OTTERMAN SEPT. 29, 2008

WASHINGTON — An internal Justice Department investigation concluded Monday that political pressure drove the firings of several federal prosecutors in a 2006 purge, but said that the refusal of major players at the White House and the department to cooperate in the year-long inquiry produced significant "gaps" in its understanding of the events.

At the urging of the investigators, who said they did not have enough evidence to justify recommending criminal charges in the case, Attorney General Michael B. Mukasey appointed the Acting United States Attorney in Connecticut, Nora Dannehy, to continue the inquiry and determine whether anyone should be prosecuted.

The 356-page report, prepared by the department's inspector general and its Office of Professional Responsibility, provides the fullest picture to date of an episode that opened the Bush administration up to charges of politicizing the justice system. The firings of nine federal prosecutors, and the Congressional hearings they generated, ultimately led to the resignation of Attorney General Alberto Gonzales last September.

The investigation, which uncovered White House e-mail messages not previously made public, offered a blistering critique of Mr. Gonzales's management of the department. It called Mr. Gonzales "remarkably unengaged" in overseeing an unprecedented personnel review, and said that he "abdicated" his administrative responsibilities, leaving those duties to his chief of staff. It said that the process for deciding which prosecutors were fired was "fundamentally flawed."

More troubling, the investigation concluded that, despite the denials of the

administration at the time of the controversy, political considerations played a part in the firings of at least four of the nine prosecutors.

Related Coverage

The most serious case, the report said, was the firing of David Iglesias, the former United States Attorney for New Mexico, who had tangled with two of his state's leading Republican lawmakers, Senator Pete Domenici and Representative Heather A. Wilson, over what they saw as his slow response to voter fraud and political corruption accusations against Democrats in New Mexico.

"We concluded," the inquiry said, "that complaints from New Mexico Republican politicians and party activists to the White House and the Department about Iglesias's handling of voter fraud and public corruption cases led to his removal."

But in looking into the Iglesias firing and others, investigators were hampered by the refusal of the White House to turn over internal documents and to make some major figures available for interviews. Investigators interviewed some 90 people, but three administration officials who played a part in crucial phases of the firing plan — Karl Rove, the former political advisor to President Bush; Harriet E. Miers, the former White House counsel; and Monica M. Goodling, former Justice Department liaison to the White House — all refused to be interviewed.

It was Ms. Miers who first proposed, after Mr. Bush's re-election in 2004, that the administration consider firing all 93 federal prosecutors, and she helped oversee the process at the White House. The investigation found that Mr. Rove's desire to see one of his deputies, Tim Griffin, installed as a United States Attorney led directly to the firing of Bud Cummins, the chief federal prosecutor in Arkansas.

The inquiry also focused on the efforts by Justice officials to tamp down the

controversy in early 2007 through what the report concluded was a series of misleading and inaccurate statements to Congress and the press. Chief among them was the repeated claim that the prosecutors were fired for "performance" reasons after a careful review of formal evaluations. In fact, the report said, politics was the driving factor, and only two of the nine prosecutors had negative evaluations.

Mr. Mukasey, in announcing the appointment of an in-house prosecutor to continue the investigation, acknowledged that the process for firing the prosecutors was "haphazard, arbitrary and unprofessional, and that the way in which the Justice Department handled those removals and the resulting public controversy was profoundly lacking."

The fired prosecutors, he said, "did not deserve the treatment they received."

The new prosecutor, Ms. Dannehy, has been the acting United States Attorney in Connecticut since April. A graduate of Harvard Law School, she has been a prosecutor for 17 years and specializes in white-collar and public corruption cases. She led the prosecution of Connecticut's former governor John Rowland, who pleaded guilty in 2004 to accepting $107,000 in gifts.

Mr. Mukasey, who succeeded Mr. Gonzales and has sought to restore a measure of credibility to the department, said the report was "an important step toward acknowledging what happened and holding the responsible officials to proper account."

While the inquiry will continue, Mr. Gonzales described the report as the closing chapter in the episode. "My family and I are glad to have the investigation of my conduct in this matter behind us and we look forward to moving on to new challenges," he said in a statement.

His lawyer, George J. Terwilliger III, took issue with the decision by the

department to "escalate the matter" by continuing the investigation. "The report makes clear that Judge Gonzales engaged in no wrongful or improper conduct while recognizing, as he has acknowledged many times, that the process for evaluating U.S. attorney performance in this instance was flawed," Mr. Terwilliger said.

EXHIBIT 9

Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, JANUARY 2, 2008
WWW.USDOJ.GOV

OPA
(202) 514-2007
TDD (202) 514-1888

Statement by Attorney General Michael B. Mukasey Regarding the Opening of an Investigation Into the Destruction of Videotapes by CIA Personnel

"Following a preliminary inquiry into the destruction by CIA personnel of videotapes of detainee interrogations, the Department's National Security Division has recommended, and I have concluded, that there is a basis for initiating a criminal investigation of this matter, and I have taken steps to begin that investigation as outlined below.

"This preliminary inquiry was conducted jointly by the Department's National Security Division and the CIA's Office of Inspector General. It was opened on December 8, 2007, following disclosure by CIA Director Michael Hayden on December 6, 2007, that the tapes had been destroyed. A preliminary inquiry is a procedure the Department of Justice uses regularly to gather the initial facts needed to determine whether there is sufficient predication to warrant a criminal investigation of a potential felony or misdemeanor violation. The opening of an investigation does not mean that criminal charges will necessarily follow.

"An investigation of this kind, relating to the CIA, would ordinarily be conducted under the supervision of the United States Attorney for the Eastern District of Virginia, the District in which the CIA headquarters are located. However, in an abundance of caution and on the request of the United States Attorney for the Eastern District of Virginia, in accordance with Department of Justice policy, his office has been recused from the investigation of this matter, in order to avoid any possible appearance of a conflict with other matters handled by that office.

"As a result, I have asked John Durham, the First Assistant United States Attorney in the United States Attorney's Office for the District of Connecticut, to serve as Acting United States Attorney for the Eastern District of Virginia for purposes of this matter. Mr. Durham is a widely respected and experienced career prosecutor who has supervised a wide range of complex investigations in the past, and I am grateful to him for his willingness to serve in this capacity. As the Acting United States Attorney for purposes of this investigation, Mr. Durham will report to the Deputy Attorney General, as do all United States Attorneys in the ordinary course. I have also directed the FBI to conduct the investigation under Mr. Durham's supervision.

"Earlier today, the Department provided notice of these developments to Director Hayden and the leadership of the Judiciary and Intelligence Committees of the Congress."

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08-001

EXHIBIT 10

Criminal Probe on CIA Tapes Opened

Case Assigned to Career Prosecutor

By Dan Eggen and Joby Warrick
Washington Post Staff Writers
Thursday, January 3, 2008

The Justice Department said yesterday that it has opened a formal criminal investigation into the CIA's destruction of interrogation tapes, appointing a career prosecutor to examine whether intelligence officials broke the law by destroying videos of exceptionally harsh questioning of terrorism suspects.

The criminal probe, announced by Attorney General Michael B. Mukasey, significantly escalates a preliminary inquiry into whether the CIA's actions constituted an obstruction of justice. Officials have said that some White House and Justice Department lawyers advised the CIA not to destroy the tapes, which contained information of interest to the attorneys of detainees and to a congressionally chartered panel examining the Sept. 11, 2001, terrorist attacks.

The decision opens the door to fresh scrutiny of the CIA's activities by the FBI, which clashed repeatedly with CIA field officers over the use of the harsh interrogation techniques and ultimately withdrew its own agents from interrogations to avoid entanglement in activities that senior FBI officials considered improper.

To oversee the probe, Mukasey appointed John Durham, a career federal prosecutor from Connecticut, bypassing the department's Washington headquarters and the local U.S. attorney's office in Alexandria, which recused itself from the case.

"Following a preliminary inquiry into the destruction by CIA personnel of videotapes of detainee interrogations, the Department's National Security Division has recommended, and I have concluded, that there is a basis for initiating a criminal investigation of this matter," Mukasey said in a statement. He cautioned that "the opening of an investigation does not mean that criminal charges will necessarily follow."

The department said on Dec. 8 that it began a preliminary inquiry after the CIA's disclosure that its officers had destroyed videotapes of the interrogations of two senior al-Qaeda suspects in 2002. The CIA said Jose Rodriguez Jr., then the agency's director of clandestine operations, ordered the tapes' destruction, acting out of what agency officials initially said was concern that CIA interrogators could be at risk of terrorist retaliation.

Some former CIA officials later said that the destruction, which came shortly after The Washington Post disclosed the existence of secret CIA interrogation sites in Europe and elsewhere, was also prompted by concern that the interrogators could be at risk of prosecution.

Mukasey's decision was supported by some members of Congress, which has launched its own investigation of the matter. But House Judiciary Committee Chairman John Conyers Jr. (D-Mich.) criticized the probe over its "limited scope" and advocated the appointment of "a more independent special counsel."

"Nothing less than a special counsel with a full investigative mandate will meet the tests of independence, transparency and completeness," Conyers said in a statement.

Durham, who will lead the probe, is second-in-command at the U.S. attorney's office in Connecticut but will serve as an acting U.S. attorney and report to Craig Morford, the acting deputy attorney general and a former career prosecutor. Mukasey described Durham as "a widely respected and experienced career prosecutor who has supervised a wide range of complex investigations in the past."

Durham is well known as a publicity-averse specialist in organized crime cases. Former attorney general Janet Reno named him as a special prosecutor in the investigation of allegations that FBI agents and police officers in Boston had ties to Mafia informants, resulting in the 2002 racketeering conviction of one of the FBI agents. He is a registered Republican, according to Connecticut voter records.

Mukasey did not indicate in his statement whether he or any of his aides will recuse themselves from the probe. Democratic lawmakers have urged him to do so because some Justice Department lawyers had advised the CIA not to destroy the tapes.

Leaders of the House and Senate intelligence committees vowed to continue their separate inquiries, including a hearing on Jan. 16 at which they plan to grill Rodriguez. Various committee members have accused the CIA of not properly informing them about how the tapes came to be made and, later, destroyed, despite CIA statements to the contrary.

"Those tapes may have been evidence of a crime, and their destruction may have been a crime in itself," said Sen. Edward M. Kennedy (D-Mass.) in a statement yesterday. Jamal D. Ware , a senior member of the Republican staff of the House intelligence committee, said he supports the criminal probe, "given the failure to keep Congress fully and currently informed of the existence and destruction of these tapes and the apparent attempt to mislead the public about what the committee knew of the matter."

The CIA issued a statement promising to "cooperate fully with this investigation," which senior officials had expected. "Everyone understood this would not end with the preliminary inquiry," said one U.S. official familiar with the agency's decision-making.

A former senior intelligence official saw some benefit in the decision to appoint someone from outside Washington to head the probe. "It's not a bad idea to try to depoliticize the investigation -- to insulate the department as much as possible from the kind of political turmoil we often see in this town," the former official said, referring to the Justice Department.

Several officials said that the FBI has not been deeply involved in the tapes probe and that the decision to pursue a full-scale investigation was made by senior Justice Department officials, based on a finding by prosecutors in the National Security Division that evidence suggests criminal violations may have occurred.

The precise reason for the finding and the names of those targeted by the probe could not be learned yesterday.

Although the tapes in question were not provided to any court or to the members of the government-appointed 9/11 Commission, they were evidently seen by CIA Inspector General John L. Helgerson, who disclosed in a statement yesterday that he plans to recuse himself from the criminal inquiry to avoid a conflict of interest.

Helgerson said he and his staff "reviewed the tapes at issue some years ago," when agency officials were debating whether to destroy them. "During the coming weeks I anticipate describing fully the actions I and my office took on this matter to investigators from the executive and legislative branches," Helgerson said.

A Justice Department official, who spoke about internal deliberations on the condition of anonymity, said the U.S. attorney's office in Alexandria had recused itself to "err on the side of caution." Several cases handled by that office, including the prosecution and conviction of al-Qaeda operative Zacarias Moussaoui, involved CIA interrogations, possibly including those that had been videotaped.

Staff writer John Solomon and staff researcher Julie Tate contributed to this report.

View all comments that have been posted about this article.

EXHIBIT 11

JUSTICE NEWS

Attorney General Eric Holder Regarding a Preliminary Review into the Interrogation of Certain Detainees

~ Monday, August 24, 2009

"The Office of Professional Responsibility has now submitted to me its report regarding the Office of Legal Counsel memoranda related to so-called enhanced interrogation techniques. I hope to be able to make as much of that report available as possible after it undergoes a declassification review and other steps. Among other findings, the report recommends that the Department reexamine previous decisions to decline prosecution in several cases related to the interrogation of certain detainees.

"I have reviewed the OPR report in depth. Moreover, I have closely examined the full, still-classified version of the 2004 CIA Inspector General's report, as well as other relevant information available to the Department. As a result of my analysis of all of this material, I have concluded that the information known to me warrants opening a preliminary review into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations. The Department regularly uses preliminary reviews to gather information to determine whether there is sufficient predication to warrant a full investigation of a matter. I want to emphasize that neither the opening of a preliminary review nor, if evidence warrants it, the commencement of a full investigation, means that charges will necessarily follow.

"Assistant United States Attorney John Durham was appointed in 2008 by then-Attorney General Michael Mukasey to investigate the destruction of CIA videotapes of detainee interrogations. During the course of that investigation, Mr. Durham has gained great familiarity with much of the information that is relevant to the matter at hand. Accordingly, I have decided to expand his mandate to encompass this related review. Mr. Durham, who is a career prosecutor with the Department of Justice and who has assembled a strong investigative team of experienced professionals, will recommend to me whether there is sufficient predication for a full investigation into whether the law was violated in connection with the interrogation of certain detainees.

"There are those who will use my decision to open a preliminary review as a means of broadly criticizing the work of our nation's intelligence community. I could not disagree more with that view. The men and women in our intelligence community perform an incredibly important service to our nation, and they often do so under difficult and dangerous circumstances. They deserve our respect and gratitude for the work they do. Further, they need to be protected from legal jeopardy when they act in good faith and within the scope of legal guidance. That is why I have made it clear in the past that the Department of Justice will not prosecute anyone who acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees. I want to reiterate that point today, and to underscore the fact that this preliminary review will not focus on those individuals.

"I share the President's conviction that as a nation, we must, to the extent possible, look forward and not backward when it comes to issues such as these. While this Department will follow its obligation to take this preliminary step to examine possible violations of law, we will not allow our important work of keeping the American people safe to be sidetracked.

"I fully realize that my decision to commence this preliminary review will be controversial. As Attorney General, my duty is to examine the facts and to follow the law. In this case, given all of the information currently available, it is clear to me that this review is the only responsible course of action for me to take."

Speaker:
Attorney General: Eric H. Holder, Jr.

Component(s):
Office of the Attorney General

Updated August 20, 2015

EXHIBIT 12

Special Prosecutor to Probe CIA Handling of Terror Suspects

New Details Emerge On Interrogations; Agency Morale Low

By Siobhan Gorman, Peter Spiegel and Cam Simpson
Updated Aug. 25, 2009 12:01 a.m. ET

WASHINGTON -- The Justice Department on Monday appointed a special prosecutor to investigate alleged CIA mistreatment of terror suspects, a move representing a sharp break from the president's early determination to move beyond Bush-era controversies.

Mr. Durham is already examining the destruction of 92 videotapes that recorded certain Central Intelligence Agency interrogations of detainees, part of an investigation launched in early 2008 under the Bush administration. He will now also be probing whether CIA officers or contractors broke any laws with their use of harsh tactics.

President Barack Obama will also establish an elite unit to interrogate high-value detainees, creating a team of trained interrogators drawn from law

enforcement, intelligence and military agencies.

The announcements came as the Justice Department released a heavily redacted report from the CIA's inspector general, as well as several hundred pages of additional documents on the CIA's interrogation program.

The 2004 report detailed fresh instances of alleged abuse. It says one interrogator threatened to kill the children of one 9/11 suspect, while another threatened a detainee's mother. Other interrogators held a power drill to a prisoner's head, while others temporarily choked off the flow of blood to the brain before another detainee was revived.

"As a result of my analysis of all of this material, I have concluded that the information...warrants opening a preliminary review into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations," Mr. Holder said in a statement. He added that the preliminary review doesn't mean charges will necessarily be filed.

"It is clear to me that this review is the only responsible course of action for me to take," Mr. Holder said.

CIA Director Leon Panetta wrote in a memo to agency employees Monday that the allegations in the report are "in many ways an old story." He said past Justice Department probes of the material were exhaustive.

Mr. Panetta said the CIA had forwarded allegations of abuse to the Justice Department so the department could decide whether to prosecute. "They worked carefully and thoroughly, sometimes taking years to decide if prosecution was warranted or not," Mr. Panetta wrote, in reference to the criminal prosecutors from the Justice Department.

At the agency, the decision to open an investigation has already "had a very dramatic impact" on morale, said former CIA Director Michael Hayden, based on communications with his former agency.

In a careful balancing act, Mr. Panetta's memo aimed to support agency officers without supporting the interrogation program, which he opposed. "Whether this was the only way to obtain that information will remain a legitimate area of dispute, with Americans holding a range of views on the methods used," Mr. Panetta said.

CIA and Justice Department lawyers met prior to the decision, and Mr. Panetta spoke with Mr. Holder Monday, said one official familiar with the matter.

The official described the CIA's position as "the president wants us to look forward not backward. A backwards-looking inquiry is inconsistent with that vision." The official added that CIA officials made that view "abundantly clear."

CIA officials have stated repeatedly that while some interrogators may have been out of bounds the program produced useful intelligence.

However the report raises significant questions as to whether some of the most controversial, approved interrogation techniques, particularly waterboarding, were actually effective in eliciting useful intelligence, and whether they were applied in a legal manner.

Mr. Durham, a career federal prosecutor in Connecticut since 1982, is highly regarded in the Justice Department. In 1999, Clinton administration Attorney General Janet Reno appointed him to lead a special team that investigated alleged criminal misconduct by Federal Bureau of Investigation agents and other law-enforcement corruption in Boston.

Unless the probe unearths new evidence, findings contrary to earlier decisions by the Justice Department will likely come under attack by lawyers defending the subjects of the probe as well as by critics of the Obama administration.

In assembling the report, which reviewed more than 38,000 documents and interviewed more than 100 individuals, Inspector General John Helgerson's team also traveled to the secret detention sites and reviewed the 92 interrogation videotapes that were later destroyed.

In a statement Monday, Mr. Helgerson, who retired from the agency earlier this year, said his team's work on interrogation issues "helped lead to clarification of the law, to strengthened management controls and operational procedures, and to more judicious use of interrogation techniques, including the abandonment of waterboarding." He said he was disappointed that the agency withheld all of the report's recommendations—which were redacted by the CIA.

Even before the announcement of the new inquiry, the White House sought to distance itself from the politically fraught decision. "The president thinks that Eric Holder, who he appointed as a very independent attorney general, should make those decisions," said White House spokesman Bill Burton.

U.S. Attorney General Eric Holder at a conference in Washington. Getty Images

The inquiry contains previously unreported interrogation techniques that investigators determined were either "unauthorized" or "undocumented."

Among the more sensational incidents occurred in July 2002, when an interrogator, identified only as an "operation officer," used "both hands on the detainee's neck [and] manipulated his fingers to restrict the detainee's carotid artery." The report said the interrogator, who used the technique three times in a row on a single shackled detainee, would continue holding the neck until the detainee "would nod and start to pass out," at which point the detainee was shaken awake.

Waterboarding, or simulated drowning, which many equate with torture, was employed in a manner differently from what had been authorized, the report found. An interrogator continuously applied large volumes of water to a cloth that covered the detainee's mouth and nose instead of applying a small amount of water in a controlled manner.

The report describes the threat of the use of a handgun and power drill on the alleged architect of U.S.S. Cole bombing, Abd al-Rahim al-Nashiri. The debriefer took an unloaded semiautomatic handgun and simulated a bullet being chambered twice near Mr. Nashiri's head.

That debriefer also helped stage a "mock execution," in which a gun was fired outside an interrogation room and a guard, dressed up to look like a hooded detainee, posed motionless on the ground when the real detainee passed to "appear as if he had been shot to death."


Khalid Sheikh Mohammed Associated Press

Mr. Nashiri was also held in "potentially injurious stress positions" that hadn't been specifically authorized that could have dislocated his arms from his shoulders. Interrogators also used "a stiff brush that was intended to induce pain" on Mr. Nashiri, and they stood on his shackles, which resulted in cuts and bruises on his ankles.

Other "unauthorized" techniques included a detainee who was "left in a cold room, shackled and naked, until he demonstrated cooperation" and cases of "water dousing," where detainees lay on plastic sheets while water was poured over them for 10 to 15 minutes at a time.

The report found that overall, the interrogation program used by the CIA enabled the agency to capture terrorists and warn of plots planned against the U.S. and around the world. But the inspector general said it was far

more difficult to determine whether the "enhanced interrogation techniques" were effective and gives conflicting evidence as to their usefulness in eliciting information.


Abd al-Rahim al-Nashiri Reuters

For example, the inquiry said it couldn't say for certain if the waterboarding of alleged al Qaeda commander Abu Zubaydah 83 times had led to increased cooperation. On the other hand, the treatment of Mr. Mohammed, who was waterboarded 183 times in March 2003, was viewed as having been far more effective.

The report questions whether these repeated waterboardings were outside the legal guidance provided by the Justice Department—a determination that could open the interrogators to prosecution under Mr. Holder's review.

Mr. Helgerson said Monday that "the very large number of applications to which some detainees were subjected led to the inescapable conclusion that the agency was abusing this technique."

New revelations are also included in other, previously undisclosed documents released late Monday, including memos between the Justice Department and CIA dating to June and July 2004.

They show then-attorney general John Ashcroft trying to get George Tenet, who was the CIA director, to request changes in the CIA inspector general's final investigative report on harsh tactics. Mr. Ashcroft, according to a memo from one of his deputies, wanted the CIA to "clarify ambiguities or correct mistaken characterizations" regarding the attorney general's own actions and those of his agency. The memos show Mr. Tenet passed on the request, but that the CIA's inspector general quickly rejected it. The

inspector general did promise to forward a Justice Department memo on the requested changes to the House and Senate intelligence committees.

Write to Siobhan Gorman at siobhan.gorman@wsj.com, Peter Spiegel at peter.spiegel@wsj.com and Cam Simpson at cam.simpson@wsj.com

EXHIBIT 13

United States Department of Justice

Executive Office for United States Attorneys

Jay Macklin
General Counsel

501 Third Street, N.W., Suite 5500
Washington, DC 20530

PHONE (202) 514-4024
FAX (202) 514-1104

MAR 0 8 2010

Patrick Fitzgerald
United States Attorney
Northern District of Illinois
219 S. Dearborn St., Fifth Floor
Chicago, IL 60604

Dear USA Fitzgerald:

You are hereby appointed as a Special Attorney to the United States Attorney General pursuant to 28 U.S.C. § 515. In this capacity, you will investigate and determine whether criminal charges are appropriate in connection with any matter arising out of the Department of Defense seizures of certain photographs from Guantanamo Bay detainees.

This appointment is made subject to the following terms and conditions, with which we ask that you express your concurrence by signing this letter and forwarding it to the Deputy Attorney General:

1. Your appointment under 28 U.S.C. § 515 as a Special Attorney in this matter expires after the completion of all investigations, matters, cases, or related actions, unless extended;

2. With regard to all matters handled by you as a Special Attorney, you will report to and act under the supervision and direction of the Deputy Attorney General, United States Department of Justice, or his designee;

3. During and after the term of your appointment, you will be subject to all the laws, regulations, and policies applicable to employees of the Department of Justice and to former employees which prohibit your disclosure to unauthorized persons of information obtained by you in the course of your work as a Special Attorney. These include, but are not limited to, the Standards of Conduct for Federal Employees (5 C.F.R. § 2635), the Department's Standards of Conduct (5 C.F.R. § 3801), Federal conflict of interest law (18 U.S.C. § 1905), the Freedom of Information Act (5 U.S.C. § 552), and the Privacy Act (5 U.S.C. § 552a).

4. You will serve without compensation other than that which you receive pursuant

to your existing employment as the United States Attorney for the Northern District of Illinois; and,

5. Your appointment as Special Attorney in this matter may be terminated at any time without cause or advance notice.

Please execute, date, and return the following documents to the Deputy Attorney General:

- the enclosed oath of office; and
- a copy of this letter (your signature below expresses your concurrence with the terms and conditions specified in this letter).

This appointment becomes effective when these completed documents have been received by Deputy Attorney General.

As necessary in future actions, you may file a copy of this letter and the enclosed oath of office with the Clerk of the Court to evidence this authorization.

Sincerely,

Jay Macklin
General Counsel

The foregoing terms and conditions
are hereby agreed to and accepted:

(Signature) (Date) June 8, 2010

APPOINTMENT AFFIDAVITS

Special Attorney — (Position to which Appointed)

March 8, 2010 — (Date Appointed)

Dept. of Justice — (Department or Agency)

(Bureau or Division)

Chicago, Illinois — (Place of Employment)

I, Patrick Fitzgerald, do solemnly swear (or affirm) that--

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO THE PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

Patrick Fitzgerald
(Signature of Appointee)

Subscribed and sworn (or affirmed) before me this___ day of _____, 2____

at _____ (City) _____ (State)

(SEAL)

_____
(Signature of Officer)

Commission expires_____
(If by a Notary Public, the date of his/her Commission should be shown)

_____
(Title)

Note - If the appointee objects to the form of the oath on religious grounds, certain modifications may be permitted pursuant to the Religious Freedom Restoration Act. Please contact your agency's legal counsel for advice.

EXHIBIT 14

United States Department of Justice

Executive Office for United States Attorneys

Jay Macklin
General Counsel

501 Third Street, N.W., Suite 5500
Washington, DC 20530

PHONE (202) 514-4024
FAX (202) 514-1104

July 14, 2010

Patrick Fitzgerald
United States Attorney
Northern District of Illinois
219 S. Dearborn St., Fifth Floor
Chicago, IL 60604

Dear USA Fitzgerald:

On March 8, 2010, pursuant to 28 U.S.C. § 515, you were appointed Special Attorney to the United States Attorney General to investigate and determine whether criminal charges are appropriate in connection with any matter arising out of the Department of Defense seizures of certain photographs from Guantanamo Bay detainees. A copy of your appointment letter and appointment affidavit are enclosed herewith.

This letter supplements and amends your appointment as Special Attorney to the United States Attorney General and specifically authorizes you to conduct in the District of Columbia or any other judicial district of the United States any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States Attorneys are authorized to conduct.

Sincerely,

Jay Macklin
General Counsel

The foregoing amendment
is hereby acknowledged and accepted:

(Signature)

July 14, 2010
(Date)

United States Department of Justice

Executive Office for United States Attorneys

Jay Macklin
General Counsel

501 Third Street, N.W., Suite 5500
Washington, DC 20530

PHONE (202) 514-4024
FAX (202) 514-1104

MAR 0 8 2010

Patrick Fitzgerald
United States Attorney
Northern District of Illinois
219 S. Dearborn St., Fifth Floor
Chicago, IL 60604

Dear USA Fitzgerald:

You are hereby appointed as a Special Attorney to the United States Attorney General pursuant to 28 U.S.C. § 515. In this capacity, you will investigate and determine whether criminal charges are appropriate in connection with any matter arising out of the Department of Defense seizures of certain photographs from Guantanamo Bay detainees.

This appointment is made subject to the following terms and conditions, with which we ask that you express your concurrence by signing this letter and forwarding it to the Deputy Attorney General:

1. Your appointment under 28 U.S.C. § 515 as a Special Attorney in this matter expires after the completion of all investigations, matters, cases, or related actions, unless extended;

2. With regard to all matters handled by you as a Special Attorney, you will report to and act under the supervision and direction of the Deputy Attorney General, United States Department of Justice, or his designee;

3. During and after the term of your appointment, you will be subject to all the laws, regulations, and policies applicable to employees of the Department of Justice and to former employees which prohibit your disclosure to unauthorized persons of information obtained by you in the course of your work as a Special Attorney. These include, but are not limited to, the Standards of Conduct for Federal Employees (5 C.F.R. § 2635), the Department's Standards of Conduct (5 C.F.R. § 3801), Federal conflict of interest law (18 U.S.C. § 1905), the Freedom of Information Act (5 U.S.C. § 552), and the Privacy Act (5 U.S.C. § 552a).

4. You will serve without compensation other than that which you receive pursuant

to your existing employment as the United States Attorney for the Northern District of Illinois; and,

5. Your appointment as Special Attorney in this matter may be terminated at any time without cause or advance notice.

Please execute, date, and return the following documents to the Deputy Attorney General:

- the enclosed oath of office; and
- a copy of this letter (your signature below expresses your concurrence with the terms and conditions specified in this letter).

This appointment becomes effective when these completed documents have been received by Deputy Attorney General.

As necessary in future actions, you may file a copy of this letter and the enclosed oath of office with the Clerk of the Court to evidence this authorization.

Sincerely,

Jay Macklin
General Counsel

The foregoing terms and conditions are hereby agreed to and accepted:

(Signature)

March 8, 2010
(Date)

APPOINTMENT AFFIDAVITS

Special Attorney
(Position to which Appointed)

March 8, 2010
(Date Appointed)

Dept. of Justice
(Department or Agency)

(Bureau or Division)

Chicago, Illinois
(Place of Employment)

I, Patrick Fitzgerald, do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO THE PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

Patrick Fitzgerald
(Signature of Appointee)

Subscribed and sworn (or affirmed) before me this___ day of _____, 2___

at _____ (City) _____ (State)

(SEAL)

(Signature of Officer)

Commission expires_____
(If by a Notary Public, the date of his/her Commission should be shown)

(Title)

Note - If the appointee objects to the form of the oath on religious grounds, certain modifications may be permitted pursuant to the Religious Freedom Restoration Act. Please contact your agency's legal counsel for advice.

EXHIBIT 15

United States Department of Justice

Executive Office for United States Attorneys

Jay Macklin
General Counsel

501 Third Street, N.W., Suite 5500
Washington, DC 20530

PHONE (202) 514-4024
FAX (202) 514-1104

May 27, 2011

Patrick Fitzgerald
United States Attorney
Northern District of Illinois
219 S. Dearborn St., Fifth Floor
Chicago, IL 60604

Dear USA Fitzgerald:

This letter is to clarify that the authority delegated to you by the appointment letter of March 8, 2010 (attached), includes, but is not limited to, bringing any criminal charges in connection with: (1) the improper disclosure of classified or national defense information that is related directly or indirectly to the taking of photographs of government employees, copies of which were seized from Guantanamo Bay detainees; (2) the improper disclosure of the names or other identifiers of government employees who participated in sensitive or classified government activities that led to the filing of a sealed defense document in January 2009 containing sensitive information about government employees and activities; and (3) any related improper disclosures made subsequent to January 2009. This authority also includes the authority to investigate and prosecute any efforts at obstruction of justice (including perjury or false statements) that may occur during the investigation.

As previously directed, this appointment was made subject to the following terms and conditions:

1. Your appointment under 28 U.S.C. § 515 as a Special Attorney in this matter expires after the completion of all investigations, matters, cases, or related actions, unless extended;

2. With regard to all matters handled by you as a Special Attorney, you will report to and act under the supervision and direction of the Deputy Attorney General, United States Department of Justice, or his designee;

3. During and after the term of your appointment, you will be subject to all the laws, regulations, and policies applicable to employees of the Department of Justice and to former employees which prohibit your disclosure to unauthorized persons of

information obtained by you in the course of your work as a Special Attorney. These include, but are not limited to, the Standards of Conduct for Federal Employees (5 C.F.R. § 2635), the Department's Standards of Conduct (5 C.F.R. § 3801), Federal conflict of interest law (18 U.S.C. § 1905), the Freedom of Information Act (5 U.S.C. § 552), and the Privacy Act (5 U.S.C. § 552a).

4. You will serve without compensation other than that which you receive pursuant to your existing employment as the United States Attorney for the Northern District of Illinois; and,

5. Your appointment as Special Attorney in this matter may be terminated at any time without cause or advance notice.

As necessary in future actions, you may file a copy of this letter and the earlier executed oath of office with the Clerk of the Court to evidence your authorization.

Sincerely,

Jay Macklin
General Counsel

Attachment

EXHIBIT 16

Sessions says internal watchdog looking at allegations of FISA abuse

(CNN) — Attorney General Jeff Sessions said Tuesday that the internal watchdog at the Justice Department is looking at whether the FBI has properly handled applications for surveillance orders under the Foreign Intelligence Surveillance Act.

Sessions, appearing at a news conference announcing a new opioid task force, was asked about House Intelligence Chairman Devin Nunes' controversial memo outlining purported surveillance abuses and told reporters that "the inspector general will take that as one of the matters he'll deal with."

"We believe the Department of Justice must adhere to the highest standards in the FISA court, and yes, it will be investigated, and I think that's just the appropriate thing," Sessions added.

When the Nunes memo, which focuses on the FISA warrants on former Trump campaign foreign policy adviser Carter Page, was released earlier this month, Sessions signaled that any abuses of the process would be investigated.

Nunes vs. Schiff: Five key areas where they disagree

"Congress has made inquiries concerning an issue of great importance for the country and concerns have been raised about the Department's performance," Sessions said in a statement at the time. "Accordingly, I will forward to appropriate DOJ components all information I receive from Congress regarding this. I am determined that we will fully and fairly ascertain the truth."

Sessions reiterated to Fox News last week that every FISA warrant "submitted to that court ha[s] to be accurate" and "that will be investigated and looked at."

His comments Tuesday took the matter a step further by directly putting the accusations by House Republicans on the inspector general's plate.

A spokesperson for the inspector general's office acknowledged the referral but declined to comment further.

The office is currently examining how investigations were handled at the department and the FBI in advance of the 2016 presidential election, including, notably, the Hillary Clinton email server probe.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN OVERSIGHT, *Plaintiff*, v. U.S. DEPARTMENT OF JUSTICE, *Defendant*.	)	Case No. 18-cv-319 (CRC)

PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT

Pursuant to Local Civil Rule 7(h), Plaintiff American Oversight hereby submits the following statement of material facts as to which Plaintiff contends there are no genuine issues in support of its motion for summary judgment against Defendant U.S. Department of Justice. The attached Declaration of Cerissa Cafasso in Support of Plaintiff's Cross-Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment supports this statement.

Plaintiff's Response to Defendant's Statement

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted

8. Admitted.

9. American Oversight does not have personal knowledge of the Department's internal process.

10. American Oversight does not have personal knowledge of the Department's internal process.

11. American Oversight does not have personal knowledge of the Department's internal process.

12. American Oversight does not have personal knowledge of the Department's internal process.

13. American Oversight does not have personal knowledge of the Department's internal process. To the extent that the Department is making a factual assertion, American Oversight disagrees with OIP's "conclu[sion] that the [Office of the Attorney General] information regarding the lack of the written guidance or directives to Mr. Huber was adequate and that further searches would be unlikely to identify records relevant to Plaintiff's request."

14. American Oversight does not have personal knowledge of the Department's internal process.

15. American Oversight does not have personal knowledge of the Department's internal process. To the extent that the Department is making a factual assertion, American Oversight disagrees "that no additional searching [is] necessary in this instance."

Plaintiff's Statement of Material Facts

1. On March 6, 2018, Bob Goodlatte, Chairman of the U.S. House of Representatives Committee on the Judiciary, and Trey Gowdy, Chairman of the U.S. House of Representatives Oversight and Government Reform Committee called on Attorney General Jeff Sessions and Deputy Attorney General Rod Rosenstein to appoint a special counsel to

investigate "certain decisions made and not made by the Department of Justice and FBI in 2016 and 2017." Cafasso Decl. Ex. 3.

2. On March 15, 2018, Chairman Chuck Grassley and three other members of the U.S. Senate Committee on the Judiciary wrote a letter to Attorney General Sessions and Deputy Attorney General Rosenstein requesting the appointment of a second special counsel to investigate the application and renewals of a Foreign Intelligence Surveillance Act (FISA) warrant against former Trump Campaign advisor Carter Page. Cafasso Decl. Ex. 4.

3. In February 2018, Attorney General Sessions stated that he had referred questions regarding the FBI's handling of FISA warrant applications to the Department's Inspector General—a referral contemporaneously acknowledged by the internal watchdog. *See* Cafasso Decl. Ex. 16.

4. Attorney General Sessions specifically directed U.S. Attorney for the District of Utah John Huber "to lead [the] effort" "to evaluate certain issues previously raised by the [U.S. House of Representatives] Committee [on the Judiciary]." *See* Letter from Jeff Sessions, Attorney General, U.S. Dep't of Justice, to Chuck Grassley, Chairman, U.S. Senate, Comm. on the Judiciary, Bob Goodlatte, Chairman, U.S. House of Representatives, Comm. on the Judiciary & Trey Gowdy, Chairman, U.S. House of Representatives, Comm. on Oversight & Government Reform at 27 (Mar. 29, 2018) (found in Exhibit A to the Declaration of Vanessa Brinkmann, ECF No. 16-3, at 25–28) ("Sessions Response").

5. Attorney General Sessions, or someone acting on his behalf and/or at his direction, made letters from Chairman Chuck Grassley of the U.S. Senate Committee on the Judiciary, Chairman Bob Goodlatte of the U.S. House of Representatives Committee on the

Judiciary, and Chairman Trey Gowdy U.S. House of Representatives Committee on Oversight and Government Reform "available to . . . Mr. Huber." *Id.* at 28.

6. The allegations of misconduct raised in the letters from Chairman Chuck Grassley of the U.S. Senate Committee on the Judiciary, Chairman Bob Goodlatte of the U.S. House of Representatives Committee on the Judiciary, and Chairman Trey Gowdy U.S. House of Representatives Committee on Oversight and Government Reform that are discussed in the Sessions Response fall outside the scope of Mr. Huber's statutory authority as U.S. Attorney for the District of Utah. 28 U.S.C. § 547.

7. In 2003, James Comey, in his role as Acting Attorney General, assigned the U.S. Attorney for the Northern District of Illinois, Patrick Fitzgerald, to look into whether the Bush White House deliberately leaked the identity of a CIA employee. In doing so, Acting Attorney General Comey wrote Mr. Fitzgerald a series of letters specifically stating the matter he was to investigate and the authority delegated to him and under which he was to pursue the investigation. Cafasso Decl. ¶ 6; Cafasso Decl. Ex. 5.

8. Acting Attorney General Comey's appointment of Mr. Fitzgerald and the nature of his investigation were publicly reported at the time. *See* Cafasso Decl. Ex. 6.

9. In 2008, after a report by the Department's Inspector General and the Office of Professional Responsibility found that inappropriate political pressure led to the mass firing of U.S. Attorneys, Attorney General Michael Mukasey appointed the Acting U.S. Attorney for the District of Connecticut, Nora Dannehy, to investigate the matter further to determine whether criminal charges should be brought. Specifically, Attorney General Mukasey provided clear direction to Ms. Dannehy to pick up where the more than 350-page report left off as memorialized in a publicly released statement. Cafasso Decl. Exs. 7 & 8.

10. Attorney General Mukasey's appointment of Ms. Dannehy and the nature of her investigation were publicly reported at the time. *See* Cafasso Decl. Ex. 8.

11. Also in 2008, Attorney General Mukasey tasked the then-Deputy U.S. Attorney for the District of Connecticut, John Durham, to investigate the destruction of interrogation videotapes by the CIA. Cafasso Decl. Ex. 9.

12. Attorney General Mukasey's appointment of Mr. Durham and the nature of his investigation were publicly reported at the time. *See* Cafasso Decl. Ex. 10.

13. In 2009, Attorney General Eric Holder expanded Mr. Durham's mandate to include "a preliminary review into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations." Cafasso Decl. Ex. 11.

14. Attorney General Holder's expansion of Mr. Durham's mandate and the nature of his investigation were publicly reported at the time. *See* Cafasso Decl. Ex. 12.

15. In 2010, Mr. Fitzgerald, still serving as U.S. Attorney for the Northern District of Illinois, was tasked by written appointment with supervising an investigation into "whether criminal charges are appropriate in connection with any matter arising out of the Department of Defense seizures of certain photographs from Guantanamo Bay detainees." Over the course of the investigation, Mr. Fitzgerald received at least two more letters supplementing and amending the scope of his investigation and clarifying the authority under which he did so. *See* Cafasso Decl. Exs. 13, 14 & 15.